

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANGEL RIVERA,)
Petitioner,)
v.)
JOHN ASHCROFT,¹)
Respondent.)

CIVIL ACTION
NO. 05-10629-JLT

**RESPONDENT'S SUPPLEMENTAL APPENDIX
TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

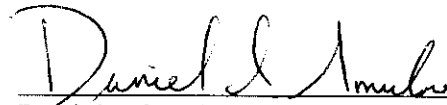
The respondent files the following documents as his supplemental appendix to his Motion to Dismiss Petition for Writ of Habeas Corpus:

1. Docket Sheets, *Commonwealth v. Angel Rivera*, 1996 ESCR Nos. 00832-838;
2. *Commonwealth v. Rivera*, 52 Mass. App. Ct. 321, 753 N.E.2d 823 (2001);
3. *Commonwealth v. Rivera*, 435 Mass. 1108, 762 N.E.2d 323 (2002);
4. *Commonwealth v. Rivera*, 61 Mass. App. Ct. 1113, 810 N.E.2d 1288 (2004);
5. *Commonwealth v. Rivera*, 442 Mass. 1108, 815 N.E.2d 1085 (2004);
6. Endorsement, *Angel Rivera v. Paul Verdini*, No. 02-CV-11185-MEL;
7. Docket Sheets, *Angel Rivera v. Paul Verdini*, First Circuit No. 03-2353; and
6. Chart Detailing Events Relating to Statute of Limitations and Tolling.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

¹ The respondent's motion to substitute Michael A. Thompson, superintendent of M.C.I. - Shirley, for John Ashcroft, former United States Attorney General, is currently pending before this Court.

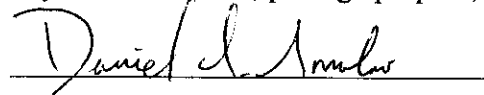


Daniel I. Smulow, BBO 641668
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200 ext. 2949

Dated: April 25, 2005

Certificate of Service

I hereby certify that a true copy of the above document was served on Angel Rivera, M.C.I. - Shirley, P.O. Box 1218, Shirley, MA 01464, by first class mail, postage prepaid, on April 25, 2005.



SA0001

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

COMMONWEALTH VS.

ANGEL RIVERA

9677CR 0832

OFFENSE: Rape, Chap. 265, sec. 23.

PLACE: Lawrence

SURETY AND AMOUNT: Annie R. Rivera-Jeter \$5,000.00 (Cash)

PROSECUTOR: Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970

COUNSEL: Committee for Public Counsel Services, 1 Salem Green, Salem 01970
Peter M. Onek, Esq. CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA. 02210

JUSTICE DISPOSING OF CASE: Boha, J.

1996 Mar.20 1 INDICTMENT FILED:

April 11

2 Antonia Nedder, Assistant District Attorney, appears for the Commonwealth.

Jill Sellers, Esq., appointed and appears for the defendant.

Defendant waives reading of the indictment and pleads not guilty.

Continued to May 9, 1996.

Cowin, J. Presiding; K.Gordon, Court Stenographer

Lawrence District Court Notified Re: Bail.

April 18 4 Cash Bail Received.

May 9 Continued to May 21, 1996.

Borenstein, J. presiding; M. Hezekiah, Court Stenographer

Pretrial Conference Report filed.

May 21 5 ORDER Re: 51A and 51B reports. (Borenstein, J.)

6 Motion for List of Potential Witnesses and Their Probation Records filed

7 and after hearing allowed.

8 Motion for Production of Department of Social Services Records-agreed.

9 Motion for Discovery of Booking Sheet and Photographs-agreed.

10 Motion for Discovery of Statements of Defendant-agreed.

11 Motion for Exculpatory Evidence-agreed.

12 Motion for Discovery of Medical Evidence-agreed.

13 Motion for Disclosure of Miranda Card and Disclosure of Names of Officers

14 Present for Miranda Warnings and Defendant's Statements-agreed.

15 Motion to Inspect Statements of Witnesses-agreed.

SA0002

1996		
May 21	16	Motion for Rewards and promises-agreed.
	17	Motion for Discovery of Previous Interviews with Alleged Victim-agreed.
	18	Motion for Discovery of Physical Scientific and Expert Evidence-agreed.
		Continued to June 20, 1996.
		Borenstein, J. presiding: B.Vega, Court Stenographer
May 23	19	District Court Papers Received.
June 20		Continued to July 16, 1996.
		Whitehead, J. presiding: B.Vega, Court Stenographer
July 16		Continued to August 19, 1996 for motions.
		Bohn, J. presiding: A.Green, Court Stenographer
August 19		Continued to September 3, 1996 for motions:
		Bohn, Jr., J. presiding: K.Gordon, Court Stenographer
Sept 3		Continued to September 6, 1996 for motions.
		Bohn, Jr., J., presiding: K.Gordon, Court Stenographer
Sept 6		Continued to September 26, 1996 for trial assignment.
		Bohn, Jr., J., presiding: K.Gordon, Court Stenographer
Sept 26		Continued to December 9, 1996 for trial.
		Bohn, Jr., J., presiding: P.Flaherty, Court Stenographer
Sept 27	20	Motion for Discovery of Complainant's Relevant Counseling and Treatment History and Affidavit-allowed as amended. (Bohn, Jr., J.)
Nov 26	21	Motion to Continue Case filed and after hearing allowed.
		Continued to February 3, 1997 for trial.
		Welch, J. presiding: M.Hezekiah, Court Stenographer
1997		
Jan 15	22	Motion to Continue-Allowed. (Bohn, Jr., J.)
		Continued to March 17, 1997.
		Bohn, Jr., J., presiding:
March 17		Continued to March 25, 1997 for trial assignment.
		Gratsley, J., presiding: A.Green, Court Stenographer
March 25	23	List of Potential Witnesses filed.
		Continued to May 27, 1997 for trial.
		Gratsley, J., presiding: A.Green, Court Stenographer
	24	ORDER to Produce Records issued to Department of Social Services.
	25	Order to Produce Records issued to Children's Hospital.
	26	Order to Produce Records issued to Pediatric Professional Associates, P.C.
	27	Order to Produce Records issued to Saint's Memorial Medical Center.
April 10	28	Impounded Record from Children's Hospital Received.
April 14	29	Impounded Record from Pediatric Professional Association Received.
April 30	30	Impounded Records From Saints Memorial Center Received
May 6	31	Motion for Indigent Summons filed and after hearing ALLOWED.
May 7	32	Summons Issued.

SA0003

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX SS.
SUPERIOR COURT
CRIMINAL
DOCKET

COMMONWEALTH VS. Angel Rivera

No. CR- 0832
PAGE 2

1997			COMMONWEALTH VS. Angel Rivera
May 16	33	Motion to Continue Case filed after hearing and allowed. Continued to May 29, 1997 for Trial.	
May 23	34	Whitehead, J., presiding: M. Hezekiah, Court Stenographer	
May 27		Motion for Funds for Expert-Allowed. (Whitehead, J.)	
May 29		Continued to May 29, 1997.	
		Welch, J., presiding: M. Hezekiah, Court Stenographer	
		Continued to June 2, 1997 at Lawrence for Trial.	
		Gratsley, J., presiding: M. Hezekiah, Court Stenographer	
	35	Impounded Records from Department of Social Services Received.	
June 2		Jury Trial Begins.	
	36	Memo of Trial filed.	
	37	Motion to Propound Questions to Prospective Jurors Individually filed.	
	38	List of Potential Witnesses filed.	
	39	Commonwealth's List of Potential Witnesses filed.	
	40	Motion in Limine: Request for Instruction on Fresh Complaint filed and Allowed.	
	41	Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed.	
	42	Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed.	
	43	Motion in Limine: Alleged Bad Acts filed and Withdrawn upon representation that no such evidence will be elicited.	
	44	Memorandum in Support of Defendant's Motion to Exclude Evidence of prior Bad Acts filed.	
	45	Motion for an In-Camera hearing on the Admission of Evidence filed and Motion for in-camera hearing is Allowed.	
	46	Motion in Limine to Exclude "Expert" Testimony of Treating Physician filed.	
	47	Commonwealth's Motion in Limine filed and Referred to Context of Trial.	
	48	Commonwealth's Motion in Limine filed and referred to Context of Trial.	
	49	Motion in Limine to Exclude the term "Victim" filed and Allowed.	
	50	Motion for Bill of Particulars-after hearing, defendant's Motion is Denied.	
		See Commonwealth V. Sanchez.	
	51	Motion to Dismiss-Affidavit and Memorandum of Law-After hearing Motion is Denied.	
	52	Motion for Sequestration of Witnesses During Trial filed and Allowed.	
	53	Motion in Limine - Disclosure filed and Denied.	
	54	Motion in Limine filed and Allowed.	
	55	Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial.	
	56	Motion in Limine Re: Opinion of Guilt filed and Allowed.	
	57	Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to Two fresh complaint witnesses.	
		Bohm, J., presiding: F. Vega, Court Stenographer	

1997		
June 4	58	Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.)
June 5	59	Defendant's Request for Instruction filed.
June 6	60	Commonwealth's Request for jury instructions filed.
	61	Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.)
	62	VERDICT: Guilty of Rape of a Child Under the Age of Sixteen Years.
	63	SENTENCE: Eight (8) years to Flight (8) years and One (1) day committed to Massachusetts Victim Witness Assessment, 30-00.
		Correctional Institution Cedar Junction. Credit of Zero (0) days.
		All Fees and Assessments waived.
		Notified Appeals 2/8/28 and Appellate Division.
	64	Notified in Open Court Sex Offender Registry (Defendant refuses to sign the notice)
	65	Notification Relative to Sex Offender Registration under Chapter 6 Section 178E(c).
	66	Notice of Appeal filed.
		Motion for Stay of Execution Pending Appeal filed and Denied.
		Bohn, J., presiding; M. Parziale, Court Stenographer
June 10	67	Request for Transcript received.
June 11	68	Appeal from Sentence to Massachusetts Correctional Institution, Cedar Junction filed.
June 16	69	Transmitted to the Appellate Division and All Parties Notified.
	70	Request for transcript form received S. Jane Haggerty, ADA. No additions
July 14	71	Peter M. Onek, Esq., appears for the defendant
	72	Notice sent to B. Vega and M. Parziale to prepare transcripts
	73	CERTIFICATE of First Assistant Clerk re: Order of transcripts to B. Vega and M. Parziale, Court Stenographers
Sept 3	74	Transcript received (1 volume dated 6/2/97) from B. Vega, Court Stenographer
1998		
Mar 17	75	Transcripts received (4 volumes dated June 3, 4, 5, 6 of 1997) from M. Parziale, Court stenographer.
April 15	76	CERTIFICATE: Receipt of transcripts from the D.A.'s office (4 volumes)
	77	CERTIFICATE: Receipt of transcripts from CPCS (4 volumes)
Aug 25	78	Notice from the Appellate Division dated July 29, 1998 Re: withdrawal of petition for review of sentence.
1999		
Jan 11	79	Notice of Assignment of Counsel G2399270-6, Allison Beauparlant, Esq. CPCS assigned.
April 7	80	Notice of Assembly of Record and transcripts transmitted to the Appeals Court.
June 25	81	\$50.00 victim/witness assessment received.

SA0004

SA0005

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX SS.
SUPERIOR COURT
CRIMINAL
DOCKET

COMMONWEALTH VS.

ANGEL RIVERA

9677CR 0833

OFFENSE: Rape, of a child under the age of sixteen years, Chap. 265, sec. 23.

PLACE: Lawrence

SURETY AND AMOUNT:

PROSECUTOR: Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970

COUNSEL: Committee for Public Counsel Services, 1 Salem Green, Salem 01970

Peter M. Onek, Esq., CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA 02210

JUSTICE DISPOSING OF CASE: Bohn, J.

1996 Mar. 20

1

INDICTMENT FILED:

April 11

Antonia Nedder, Assistant District Attorney, appears for the Commonwealth.

Jill Sellers, Esq., appointed and appears for the defendant. See 2 in 96CR 832

Defendant waives reading of the indictment and pleads not guilty.

Defendant ordered to recognize Same Bail as District Court.

Continued to May 9, 1996.

Cowin, J. presiding: K. Gordon, Court Stenographer

Lawrence District Court Notified Re: Bail. See 3 in 96CR 832

April 12

Continued to May 21, 1996.

May 9

Borenstein, J. presiding: M. Hezekiah, Court Stenographer

Pretorial Conference Report filed. See 5 in 96CR 832

ORDER Re: 51A and 51B reports. (Borenstein, J.) See 6 in 96CR 832

Motion for List of Potential Witnesses and Their Probation Records filed

and after hearing allowed. See 7 in 96CR 832

Motion for Production of Department of Social Services Records-agreed. See

8 in 96CR 832

Motion for Discovery of Booking Sheet and Photographs-agreed. See 9 in 96CR 832

Motion for Discovery of Statements of Defendant-agreed. See 10 in 96CR 832

Motion for Exculpatory Evidence-agreed. See 11 in 96CR 832

Motion for Discovery of Medical Evidence-agreed. See 12 in 96CR 832

Motion for Disclosure of Miranda Card and Disclosure of Names of Officers

Present for Miranda Warnings and Defendant's Statements-agreed. See 13 in

96CR 832

SA0006

19 96	
May 21	Motion for Disclosure of Prior and Subsequent Bad Acts-agreed. See 15 in 96CR 832
	Motion for Rewards and promises-agreed. See 16 in 96CR 832
	Motion for Discovery of Previous Interviews with Alleged Victim-agreed. See 17 in 96CR 832
	Motion for Discovery of Physical Scientific and Expert Evidence-agreed. See 18 in 96CR 832
	Continued to June 20, 1996.
May 23	Borenstein, J. presiding: B. Vega, Court Stenographer
June 20	District Court Papers Received. See 19 in 96CR 832
	Continued to July 16, 1996.
July 16	Whitehead, J. presiding: B. Vega, Court Stenographer
	Continued to August 19, 1996 for motions.
August 19	Bohn, J. presiding: A. Green, Court Stenographer
	Continued to August 28, 1996 for motion to dismiss.
Sept 3	Bohn, Jr. J., presiding: A. Green, Court Stenographer
	Continued to September 6, 1996 for motions.
Sept 6	Bohn, Jr. J. presiding: K. Gordon, Court Stenographer
	Continued to September 26, 1996 for trial assignment.
Sept 26	Bohn, Jr. J., presiding: K. Gordon, Court Stenographer
	Continued to December 9, 1996 for trial.
Sept 27	Bohn, Jr. J., presiding: P. Flaherty, Court Stenographer
	Motion for Discovery of Complainant's Relevant Counseling and Treatment History and Affidavit-allowed as amended. (Bohn, Jr. J.) See 20 in 96CR 832
Nov 26	Motion to Continue Case filed and after hearing allowed. See 21 in 96CR 832
	Continued to February 3, 1997 for trial.
1997	Welch, J. presiding: M. Hezekiah, Court Stenographer
Jan 15	Motion to Continue-Allowed. (Bohn, Jr. J.) See 22 in 96CR 832
	Continued to March 17, 1997.
March 17	Bohn, Jr. J., presiding:
	Continued to March 25, 1997 for trial assignment.
March 25	Gratsley, J., presiding: A. Green, Court Stenographer
	List of Potential Witnesses filed. See 23 in 96CR 832
	Continued to May 27, 1997 for trial.
	Gratsley, J., presiding: A. Green, Court Stenographer
	ORDER to Produce Records issued to Department of Social Services. See 24 in 96CR 832
	Order to Produce Records issued to Children's Hospital. See 25 in 96CR 832
	Order to Produce Records issued to Pediatric Professional Associates, P.C.
	See 26 in 96CR 832
	Order to produce Records issued to Saint's Memorial Medical Center. See 27 in 96CR 832

SA0007

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

1997	COMMONWEALTH VS. Angel Rivera	96 No. CR-833 PAGE two
April 10	Impounded Records from Childrens Hospital Received. See 28 in 9677CR 822	
April 14	Impounded Records from Pediatric Professional Association. See 29 in 96CR 822	
April 30	Impounded Records From Saints Memorial Medical Center Received See #30 in 9677CR-832	
May 6	Motion for Indigent Summons filed and after hearing ALLOWED. See 31 in 96CR 832	
May 7	Summons Issued. See 32 in 96CR 832	
May 16	Motion to Continue Case filed after hearing and allowed. See #33 in 96CR 832.	
	Continued to May 29, 1997 for Trial.	
	Whitehead, J., presiding: M. Hezekiah, Court Stenographer	
May 23	Motion for Funds for Expert-Allowed. (Whitehead, J.) See #34 in 96CR 832	
May 27	Continued to May 29, 1997.	
	Welch, J., presiding: M. Hezekiah, Court Stenographer	
May 29	Continued to June 2, 1997 at Lawrence for Trial.	
	Cratsley, J., presiding: M. Hezekiah, Court Stenographer	
	Impounded Records from Department of Social Services Received. See #35 in 96CR 832.	
June 2	Jury Trial Begins.	
	Memo of Trial filed. See #36 in 96CR 832.	
	Motion to Propound Questions to Prospective Jurors Individually filed. See #37 in 96CR 832.	
	List of Potential Witnesses filed. See #38 in 96CR 832.	
	Commonwealth's List of Potential Witnesses filed. See #39 in 96CR 832.	
	Motion in limine: Request for Instruction on Fresh Complaint filed and Allowed. See #40 in 96CR 832.	
	Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed. See #41 in 96CR 832.	
	Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed. See #42 in 96CR 832.	
	Motion in limine: Alleged Bad Acts filed and Withdrawn upon representation that no such evidence will be elicited. See #43 in 96CR 832.	
	Memorandum in Support of Defendant's Motion to Exclude Evidence of Prior Bad Acts filed. See #44 in 96CR 832.	
	Motion for an In-Camera hearing on the Admission of Evidence filed and Motion for in-camera hearing is Allowed. See #45 in 96CR 832.	
	Motion in limine to Exclude "Expert" Testimony of Treating Physician filed. See #46 in 96CR 832.	
	Commonwealth's Motion in limine filed and Referred to Context of Trial. See #47 in 96CR 832.	

1997		
June 2		Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #48 in 96CR 832.
		Motion in Limine to Exclude the term "Victim" filed and Allowed. See #49 in 96CR 832.
		Motion for Bill of Particulars-after hearing, defendant's Motion is Denied. See Commonwealth v. Sanchez. See #50 in 96CR 832.
		Motion to Dismiss, Affidavit and Memorandum of Law-After hearing Motion is Denied. See #51 in 96CR 832.
		Motion for Sequestration of Witnesses During Trial filed and Allowed. See #52 in 96CR 832.
		Motion in Limine - Disclosure filed and Denied. See #53 in 96CR 832.
		Motion in Limine filed and Allowed. See #54 in 96CR 832.
		Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial. See #55 in 96CR 832.
		Motion in Limine Re: Opinion of Guilt filed and Allowed. See #56 in 96CR 832.
		Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to two fresh complaint witnesses. See #57 in 96CR 832.
June 4		Bohn, J., Presiding: E. Vega, Court Stenographer
		Motion #46-Denied. (Bohn, J.)
		Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.) See #58 in 96CR 832.
June 5		Defendant's Request for Instruction filed. See #59 in 96CR 832.
		Commonwealth's Request for Jury Instructions filed. See #60 in 96CR 832.
June 6		Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.) See #61 in 96CR 832.
	2	VERDICT: Guilty of Rape of a Child Under the Age of Sixteen Years.
		PROBATION: Eight Years Probation, concurrent with 96CR 832 and 96CR 834; No Contact with the complainant or father.
		All Fees and Assessments waived.
		Notified Appeals 278/28 and Appellate Division.
		Notified in Open Court Sex Offender Registration under Chapter 6 Section 178B(c).
		Notice of Appeal filed. See #65 in 96CR 832.
		Motion for Stay of Execution Pending Appeal filed and Denied. See #66 in 96CR 832.
June 10		Bohn, J., presiding: M. Parziale, Court Stenographer
		Request for Transcript received. See #67 in 96CR 832.
July 14		Request for transcript form received from S. Jane Haggerty, ADA. See #70 in CR832
		Peter M. Onek, Esq., appears for the defendant. See #71 in CR832
		Notice sent to B. Vega and M. Parziale to prepare transcripts. See #72 in CR832
		CERTIFICATE of First Assistant Clerk re: Order of transcripts to B. Vega and

SA0008

SA0009

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

COMMONWEALTH VS. ANGEL RIVERA

No. CR- 0833
PAGE three

Sept 3	M. Parziale, Court Stenographers. See #73 in CR832
1998	Transcript received (1 volume dated 6/2/97) from B. Vega, Court Stenographer
Mar 17	See #74 in 96CR 832
April 15	Transcripts received (4 volumes dated June 3, 4, 5, 6 of 1997) from M. Parziale
1999	Court Stenographer. See #75 in 96CR 0832
Jan 11	CERTIFICATE: Receipt of transcripts from the D.A.'s office (4 vol) See #76 in CR832
April 7	CERTIFICATE: Receipt of transcripts from CPCS (4 volumes) See #77 in 96CR 832
	Notice of Assignment of Counsel C2399270-6, Allison Beauparlant, Esq. CPCS assigned.
	See #79 in 96CR 832
	Notice of Assembly of Record and transcripts transmitted to the Appeals Court. See #80 in 96CR 832

COMMONWEALTH VS.

ANGEL RIVERA

9677CR 0834

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

OFFENSE:	Rape of a Child under the age of sixteen years, Chap. 265, sec. 23.
SURETY AND AMOUNT:	PLACE: Lawrence
PROSECUTOR:	Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970
COUNSEL:	Committee for Public Counsel Services, 1 Salem Green, Salem 01970 Peter M. Onek, Esq., CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA. 02210
JUSTICE DISPOSING OF CASE:	Bohn, J.
1996 Mar. 20	INDICTMENT FILED:
April 11	Antonia Nedder, Assistant District Attorney, appears for the Commonwealth. Jill Sellers, Esq., appointed and appears for the defendant. See 2 in 96CR 832 Defendant waives reading of the indictment and pleads not guilty. Defendant ordered to recognize Same Bail as District Court. Continued to May 9, 1996.
April 12	Cowin, J. presiding: K.Gordon, Court Stenographer
May 9	Lawrence District Court Notified Re: Bail. See 3 in 96CR 832 Continued to May 21, 1996.
May 21	Borenstein, J. presiding: M.Rezekiah, Court Stenographer Pretrial Conference Report filed. See 5 in 96CR 832 ORDER Re: 51A and 51B reports. (Borenstein, J.) See 6 in 96CR 832 Motion for List of Potential Witnesses and Their Probation Records filed and after hearing allowed. See 7 in 96CR 832 Motion for Production of Department of Social Services Records-agreed. See 8 in 96CR 832 Motion for Discovery of Booking Sheet and Photographs-agreed. See 9 in 96CR 832 Motion for Discovery of Statements of Defendant-agreed. See 10 in 96CR 832 Motion for Exculpatory Evidence-agreed. See 11 in 96CR 832 Motion for Discovery of Medical Evidence-agreed. See 12 in 96CR 832 Motion for Disclosure of Miranda Card and Disclosure of Names of Officers Present for Miranda Warnings and Defendant's Statements-agreed. See 13 in 96CR 832

SA0010

1996	
May 21	Motion for Disclosure of Prior and Subsequent Bad Acts-agreed. See 15 in 96CR 832
	Motion for Rewards and Promises-agreed. See 16 in 96CR 832
	Motion for Discovery of Previous Interviews with Alleged Victim-agreed. See 17 in 96CR 832
	Motion for Discovery of Physical Scientific and Expert Evidence-agreed. See 18 in 96CR 832
	Continued to June 20, 1996.
May 23	Borenstein, J. presiding: B.Vega, Court Stenographer
June 20	District Court Papers Received. See 19 in 96CR 832
	Continued to July 16, 1996.
July 16	Whitehead, J. presiding: B.Vega, Court Stenographer
	Continued to August 19, 1996 for motions.
August 19	Bohn, J. presiding: A.Green, Court Stenographer
	Continued to September 3, 1996 for motions.
Sept 3	Bohn, Jr., J. presiding: K.Gordon, Court Stenographer
	Continued to September 6, 1996 for motions.
Sept 6	Bohn, J. presiding: K.Gordon, Court Stenographer
	Continued to September 26, 1996 for trial assignment.
Sept 26	Bohn, Jr., J. presiding: K.Gordon, Court Stenographer
	Continued to December 9, 1996 for trial.
Sept 27	Bohn, Jr., J. presiding: P.Flaherty, Court Stenographer
	Motion for Discovery of Complainant's Relevant Counseling and Treatment History and Affidavit-allowed as amended. (Bohn, Jr., J.) See 20 in 96CR 832
Nov 26	Motion to Continue Case filed and after hearing allowed. See 21 in 96CR 832
	Continued to February 3, 1997 for trial.
1997	Welch, J. presiding: M.Hezekiah, Court Stenographer
Jan 15	Motion to Continue-Allowed. (Bohn, Jr., J.) See 22 in 96CR 832
	Continued to March 17, 1997.
March 17	Bohn, Jr., J. presiding:
	Continued to March 25, 1997 for trial assignment.
March 25	Cratsley, J., presiding: A.Green, Court Stenographer
	List of Potential Witnesses filed. See 23 in 96CR 832
	Continued to May 27, 1997 for trial.
	Cratsley, J., presiding: A.Green, Court Stenographer
	ORDER to Produce Records Issued to Department of Social Services. See 24 in 96CR 832
	Order to Produce Records Issued to Children's Hospital. See 25 in 96CR 832
	Order to Produce Records Issued to Pediatric Professional Associates, P.C.
	See 26 in 96CR 832
	Order to Produce Records Issued to Saint's Memorial Medical Center. See 27 in 96CR 832

SA0011

COMMONWEALTH VS. Angel Rivera

96 No. CR. 834
PAGE two

1997

April 10

Impounded Records from Childrens Hospital Received. See 28 in 9677CR 822

April 14

Impounded Records from Pediatric Professional Association Received. See 29 in 822

April 30

Impounded Records from Saints Memorial Medical Center Received See #30 in 9677CR-

May 6

Motion for Indigent Summons filed and after hearing ALLOWED. See 31 in 9677CR-

May 7

Summons Issued. See 32 in 96CR 832

May 16

Motion to Continue Case filed and after hearing and allowed. See #33 in

96CR 832.

Continued to May 29, 1997 for Trial.

Whitehead, J., presiding: M. Hezekiah, Court Stenographer

May 23

Motion for Funds for Expert-Allowed. (Whitehead, J.) See #34 in

96CR 832

Continued to May 29, 1997

May 27

Welch, J., presiding: M. Hezekiah, Court Stenographer

Continued to June 2, 1997 at Lawrence for Trial.

May 29

Gratsley, J., presiding: M. Hezekiah, Court Stenographer

Impounded Records from Department of Social Services Received. See

#35 in 96CR 832.

Jury Trial Begins.

June 2

Memo of Trial filed. See #36 in 96CR 832.

Motion to Propound Questions to Prospective Jurors Individually filed. See

#37 in 96CR 832.

List of Potential Witnesses filed. See #38 in 96CR 832.

Commonwealth's List of Potential Witnesses filed. See #39 in 96CR 832.

Motion in Limine: Request for Instruction on Fresh Complaint filed and Allowed.

See #40 in 96CR 832.

Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed. See

#41 in 96CR 832.

Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed. See #42

in 96CR 832.

Motion in Limine: Alleged Bad Acts filed and Withdrawn upon representation that

no such evidence will be elicited. See #43 in 96CR 832.

Memorandum in Support of Defendant's Motion to Exclude Evidence of Prior Bad

Acts filed. See #44 in 96CR 832.

Motion for an In-Camera hearing on the Admission of Evidence filed and Motion

for in-camera hearing is Allowed. See #45 in 96CR 832.

Motion in Limine to Exclude "Expert" Testimony of Treating Physician filed.

See #46 in 96CR 832.

Commonwealth's Motion in Limine filed and Referred to Context of Trial. See

#47 in 96CR 832.

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

SA0012

1997		
June 2		Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #48 in 96CR 832.
		Motion in Limine to Exclude the term "Victim" filed and Allowed. See #49 in 96CR 832.
		Motion for Bill of Particulars-after hearing, defendant's Motion is Denied. See Commonwealth v. Sanchez. See #50 in 96CR 832.
		Motion to Dismiss, Affidavit and Memorandum of Law-After hearing Motion is Denied. See #51 in 96CR 832.
		Motion for Sequestration of Witnesses During Trial filed and Allowed. See #52 in 96CR 832.
		Motion in Limine - Disclosure filed and Denied. See #53 in 96CR 832.
		Motion in Limine filed and Allowed. See #54 in 96CR 832.
		Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial. See #55 in 96CR 832.
		Motion in Limine Re: Opinion of Guilt filed and Allowed. See #56 in 96CR 832.
		Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to Two fresh complaint witnesses. See #57 in 96CR 832.
June 4		Bohn, J., presiding: E. Vega, Court Stenographer
		Motion #46-Denied. (Bohn, J.)
		Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.) See #58 in 96CR 832.
June 5		Defendant's Request for Instruction filed. See #59 in 96CR 832.
		Commonwealth's Request for Jury Instructions filed. See #60 in 96CR 832.
June 6		Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.) See #61 in 96CR 832.
	2	VERDICT: Guilty of Rape of a Child Under the Age of Sixteen Years.
	3	SENTENCE: Eight (8) years to Eight (8) years and One (1) day committed to Massachusetts Correctional Institution Cedar Junction; Concurrent with 96CR 832.
		Credit of Zero (0) days.
		All Fees and Assessments waived.
		Notified Appeals 2/8/28 and Appellate Division.
		Notified in Open Court Sex Offender Registry (Defendant refuses to sign the notice)
		Notification Relative to Sex Offender Registration under Chapter 6 Section 178E(c). See #64 in 96CR 832.
		Notice of Appeal filed. See #65 in 96CR 832.
		Motion for Stay of Execution Pending Appeal filed and Denied. See #66 in 96CR 832.
June 10		Bohn, J., presiding: M. Parziale, Court Stenographer
		Request for Transcript received. See #67 in 96CR 832.
		Request for Transcript form received from S. Jane Haggerty, ADA. See #70 in 96CR 832

SA0013

COMMONWEALTH VS. ANGEL RIVERA

No. CR- 834
PAGE three

July 14

Peter M. Onak, Esq., appears for the defendant. See #71 in CR832
 Notice sent to B. Vega and M. Parziale to prepare transcripts. See #72 in CR832
 CERTIFICATE of First Assistant Clerk re: Order of transcripts to B. Vega and
 M. Parziale. Court Stenographers. See #73 in CR832
 Transcript received (1 volume dated 6/2/97) from B. Vega, Court Stenographer
 See #74 in 96CR 832

Sept 3

1998

Mar 17

Transcripts received (4 volumes dated June 3, 4, 5, 6 of 1997) from M. Parziale,
 Court stenographer. See #75 in 96CR 832

April 15

CERTIFICATE: Receipt of transcripts from the D.A.'s office (4 vols) See #76 in CR832
 CERTIFICATE: Receipt of transcripts from CPCS (4 volumes) See #77 in 96CR 832

1999

Jan 11

Notice of Assignment of Counsel C2399270-6, Allison Beauparlant, Esq. CPCS assigned.
 See #79 in 96CR 832.

April 7

Notice of Assembly of Record and transcripts transmitted to the Appeals Court. See
 #80 in 96CR 832.

COMMONWEALTH
 OF
 MASSACHUSETTS
 ESSEX, SS.
 SUPERIOR COURT
 CRIMINAL
 DOCKET

SA0014

COMMONWEALTH VS.

ANGEL RIVERA

9677CR 0835

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

OFFENSE: Rape of a Child under the age of sixteen years, Chap. 265, sec. 23.

PLACE: Lawrence

SURETY AND AMOUNT:

PROSECUTOR: Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970

COUNSEL: Committee for Public Counsel Services, 1 Salem Green, Salem 01970
Peter M. Onek, Esq., CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA. 02210

JUSTICE DISPOSING OF CASE: Bohn, J.

1996 Mar. 20 1 INDICTMENT FILED:

April 11 Antonia Nedder, Assistant District Attorney, appears for the Commonwealth.
Jill Sellers, Esq., appointed and appears for the defendant. See 2 in 96CR 832
Defendant waives reading of the indictment and pleads not guilty.
Defendant ordered to recognize Same Bail as District Court.
Continued to May 9, 1996.April 12 Cowin, J. presiding: K. Gordon, Court Stenographer
May 9 Lawrence District Court Notified Re: Bail. See 3 in 96CR 832
Continued to May 21, 1996.May 21 Borenstein, J. presiding: M. Hezekiah, Court Stenographer
Pretrial Conference Report filed. See 5 in 96CR 832

ORDER Re: 51A and 51B reports. (Borenstein, J.) See 6 in 96CR 832

Motion for List of Potential Witnesses and Their Probation Records filed
and after hearing allowed. See 7 in 96CR 832Motion for Production of Department of Social Services Records-agreed. See
8 in 96CR 832

Motion for Discovery of Booking Sheet and Photographs-agreed. See 9 in 96CR 832

Motion for Discovery of Statements of Defendant-agreed: See 10 in 96CR 832

Motion for Exculpatory Evidence-agreed. See 11 in 96CR 832

Motion for Discovery of Medical Evidence-agreed. See 12 in 96CR 832

Motion for Disclosure of Miranda Card and Disclosure of Names of Officers
Present for Miranda Warnings and Defendant's Statements-agreed. See 13 in
96CR 832

Motion for Transcript of Proceedings-agreed. See 14 in 96CR 832

SA0015

1996	
May 21	Motion for Disclosure of Prior and Subsequent Bad Acts-agreed. See 15 in 96CR 832
	Motion for Rewards and Promises-agreed. See 16 in 96CR 832
	Motion for Discovery of Previous Interviews with Alleged Victim-agreed. See 17 in 96CR 832
	Motion for Discovery of Physical Scientific and Expert Evidence-agreed. See 18 in 96CR 832
	Continued to June 20, 1996.
May 23	Borenstein, J. presiding: B. Vega, Court Stenographer
June 20	District Court Papers Received. See 19 in 96CR 832
July 16	Continued to July 16, 1996.
	Whitehead, J. presiding: B. Vega, Court Stenographer
	Continued to August 19, 1996 for motions.
August 19	Bohn, J. presiding: A. Green, Court Stenographer
	Continued to September 3, 1996 for motions.
Sept 3	Bohn, Jr., J. presiding: K. Gordon, Court Stenographer
	Continued to September 6, 1996 for motions.
Sept 6	Bohn, Jr., J. presiding: K. Gordon, Court Stenographer
	Continued to September 26, 1996 for trial assignment.
Sept 26	Bohn, Jr., J. presiding: K. Gordon, Court Stenographer
	Continued to December 9, 1996 for trial.
	Bohn, Jr., J. presiding: P. Flaherty, Court Stenographer
Sept 27	Motion for Discovery of Complainant's Relevant Counseling and Treatment History and Affidavit-allowed as amended. (Bohn, Jr., J.) See 20 in 96CR 832
Nov 26	Motion to Continue Case filed and after hearing allowed. See 21 in 96CR 832
	Continued to February 3, 1997 for trial.
	Welch, J. presiding: M. Hezekiah, Court Stenographer
1997	
Jan 15	Motion to Continue-Allowed. (Bohn, Jr., J.) See 22 in 96CR 832
	Continued to March 17, 1997.
March 17	Bohn, Jr., J. presiding:
	Continued to March 25, 1997 for trial assignment.
March 25	Gratsley, J., presiding: A. Green, Court Stenographer
	List of Potential Witnesses filed. See 23 in 96CR 832
	Continued to May 27, 1997 for trial.
	Gratsley, J., presiding: A. Green, Court Stenographer
	ORDER to Produce Records issued to Department of Social Services. See 24 in 96CR 832
	Order to Produce Records issued to Children's Hospital. See 25 in 96CR 832
	Order to Produce Records issued to Pediatric Professional Associates, P.C.
	See 26 in 96CR 832
	Order to Produce Records issued to Saint's Memorial Medical Center. See 27 in 96CR 832

SA0016

COMMONWEALTH VS. Angel Rivera

96 No. CR. 835
PAGE two

1997

April 10

April 14

April 30

May 6

May 7

May 16

May 23

May 27

May 29

June 2

Impounded Records from Childrens Hospital Received. See 28 in 9677CR 822
 Impounded Records from Pediatric Professional Association Received. See 29 in 822

Impounded Records From Saints Memorial Medical Center Received See #30 in 9677CR-832

Motion for Indigent Summons filed and after hearing ALLOWED. See 31 in 96CR 832
 Summons Issued. See 32 in 96CR 832

Motion to Continue Case filed after hearing and allowed. See #33 in 96CR 832

Continued to May 29, 1997 for Trial.

Whitehead, J., presiding: M. Hezekiah, Court Stenographer
 Motion for Funds for Expert-Allowed. (Whitehead, J.,) See #34 in 96CR 832.

Continued to May 29, 1997.

Welch, J., presiding: M. Hezekiah, Court Stenographer
 Continued to June 2, 1997 at Lawrence for Trial.

Gratsley, J., presiding: M. Hezekiah, Court Stenographer
 Impounded Records from Department of Social Services Received. See #35 in 96CR 832.

Jury Trial Begins.

Memo of Trial filed. See #36 in 96CR 832.

Motion to Propound Questions to Prospective Jurors Individually filed. See #37 in 96CR 832.

List of Potential Witnesses filed. See #38 in 96CR 832.

Commonwealth's List of Potential Witnesses filed. See #39 in 96CR 832.

Motion in Limine: Request for Instruction on Fresh Complaint filed and Allowed. See #40 in 96CR 832.

Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed. See #41 in 96CR 832.

Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed. See #42 in 96CR 832.

Motion in Limine: Alleged Bad Acts filed and Withdrawn upon representation that no such evidence will be elicited. See #43 in 96CR 832.

Memorandum in Support of Defendant's Motion to Exclude Evidence of Prior Bad Acts filed. See #44 in 96CR 832.

Motion for an In-Camera hearing on the Admission of Evidence filed and Motion for in-camera hearing is Allowed. See #45 in 96CR 832.

Motion in Limine to Exclude "Expert" Testimony of Treating Physician filed. See #46 in 96CR 832.

Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #47 in 96CR 832.

COMMONWEALTH
 OF
 MASSACHUSETTS
 ESSEX, SS.
 SUPERIOR COURT
 CRIMINAL
 DOCKET

SA0017

1997		
June 2		Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #48 in 96CR 832.
		Motion in Limine to Exclude the term "Victim" filed and Allowed. See #49 in 96CR 832.
		Motion for Bill of Particulars-after hearing, defendant's Motion is Denied. See Commonwealth v. Sanchez. See #50 in 96CR 832.
		Motion to Dismiss, Affidavit and Memorandum of Law-After hearing Motion is Denied. See #51 in 96CR 832.
		Motion for Sequestration of Witnesses During Trial filed and Allowed. See #52 in 96CR 832.
		Motion in Limine - Disclosure filed and Denied. See #53 in 96CR 832.
		Motion in Limine filed and Allowed. See #54 in 96CR 832.
		Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial. See #55 in 96CR 832.
		Motion in Limine Re: Opinion of Guilt filed and Allowed. See #56 in 96CR 832.
		Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to Two fresh complaint witnesses. See #57 in 96CR 832.
		Bohn, J., presiding: E. Vega, Court Stenographer
June 4		Motion #46-Denied. (Bohn, J.)
		Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.) See #58 in 96CR 832.
June 5		Defendant's Request for Instruction filed. See #59 in 96CR 832.
		Commonwealth's Request for Jury Instructions filed. See #60 in 96CR 832.
June 6	1	Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.) See #61 in 96CR 832.
	2	VERDICT: Guilty of Rape of a Child Under the Age of Sixteen Years.
		PROBATION: Five (5) Years Probation, from and after 96CR 832 and 96CR 834; No Contact with the complainant, Sex Offender Courses as Ordered by the Probation Officer. All Fees and Assessments waived.
		Notified Appeals 278/28 and Appellate Division.
		Notified in Open Court Sex Offender Registry (Defendant refuses to sign the notice.)
		Notification Relative to Sex Offender Registration under Chapter 6 Section 178E(c). See #64 in 96CR 832.
		Notice of Appeal filed. See #65 in 96CR 832.
		Motion for Stay of Execution Pending Appeal filed and Denied. See #66 in 96CR 832.
June 10		Bohn, J., presiding: M. Parziale, Court Stenographer
		Request for Transcript received. See #67 in 96CR 832.
July 14		Request for Transcript form received from S. Jane Haggerty, ADA. See #70 in 96CR 832
		Peter M. Onek, Esq., appears for the defendant. See #71 in CR832

SA0018

COMMONWEALTH VS. ANGEL RIVERA

No. CR. 835
PAGE three

July 14	Notice sent to B. Vega and M. Parziale to prepare transcripts. See #72 in CR832 CERTIFICATE of First Assistant Clerk re: Order of transcripts to B. Vega and M. Parziale, Court Stenographers. See #73 in CR832
Sept 3	Transcript received (1 volume dated 6/2/97) from B. Vega, Court Stenographer See #74 in 96CR 832
1998	
Mar 17	Transcripts received (4 volumes dated June 3, 4, 5, 6 of 1997) from M. Parziale, Court stenographer. See #75 in 96CR 832
April 15	CERTIFICATE: Receipt of transcripts from the D.A.'s office (4 vols) See #76 in CR832
1999	CERTIFICATE: Receipt of transcripts from CPCs (4 volumes) See #77 in 96CR 832
Jan 11	Notice of Assignment of Counsel C2399270-6, Allison Beauparlant, Esq, CPCs assigned. See #79 in 96CR 832.
April 7	Notice of Assembly of Record and transcripts transmitted to the Appeals Court. See #80 in 96CR 832.

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

SA0019

9677CR 0836

COMMONWEALTH VS. ANGEL RIVERA

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX. SS.
SUPERIOR COURT
CRIMINAL
DOCKET

OFFENSE: Rape of a Child under the age of sixteen years, Chap. 265, sec. 23.

PLACE: Lawrence

SURETY AND AMOUNT:

PROSECUTOR: Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970

COUNSEL: Committee for Public Counsel Services, 1 Salem Green, Salem 01970
Peter M. Onek, Esq., CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA. 02210

JUSTICE DISPOSING OF CASE: Bohn, J.

INDICTMENT FILED:

1996 Mar. 20 1

April 11

Antonia Nedder, Assistant District Attorney, appears for the Commonwealth.

Jill Sellers, Esq., appointed and appears for the defendant. See 2 in 96CR 832

Defendant waives reading of the indictment and pleads not guilty.

Defendant ordered to recognize Same Bail as District Court.

Continued to May 9, 1996.

Cowan, J. presiding: K. Gordon, Court Stenographer

Lawrence District Court Notified Re: Bail. See 3 in 96CR 832

Continued to May 21, 1996.

Borenstein, J. presiding: M. Hezekiah, Court Stenographer

Pretrial Conference Report filed. See 5 in 96CR 832

ORDER Re: 51A and 51B reports. (Borenstein, J.) See 6 in 96CR 832

Motion for List of Potential Witnesses and Their Probation Records filed

and after hearing allowed. See 7 in 96CR 832

Motion for Production of Department of Social Services Records-agreed. See

8 in 96CR 832

Motion for Discovery of Booking Sheet and Photographs-agreed. See 9 in 96CR 832

Motion for Discovery of Statements of Defendant-agreed. See 10 in 96CR 832

Motion for Exculpatory Evidence-agreed. See 11 in 96CR 832

Motion for Discovery of Medical Evidence-agreed. See 12 in 96CR 832

Motion for Disclosure of Miranda Card and Disclosure of Names of Officers

Present for Miranda Warnings and Defendant's Statements-agreed. See 13 in

96CR 832

SA0020

1996

May 21	Motion for Disclosure of Prior and Subsequent Bad Acts-agreed. See 15 in 96CR 832
	Motion for Rewards and promises-agreed. See 16 in 96CR 832
	Motion for Discovery of Previous Interviews with Alleged Victim-agreed. See 17 in 96CR 832
	Motion for Discovery of Physical Scientific and Expert Evidence-agreed. See 18 in 96CR 832
	Continued to June 20, 1996.
May 23	Borenstein, J., presiding: B. Vega, Court Stenographer
June 20	District Court Papers Received. See 19 in 96CR 832
	Continued to July 16, 1996.
July 16	Whitehead, J., presiding: B. Vega, Court Stenographer
	Continued to August 19, 1996 for motions.
August 19	Bohn, J., presiding: A. Green, Court Stenographer
	Continued to September 3, 1996 for motions.
Sept 3	Bohn, Jr., J., presiding: K. Gordon, Court Stenographer
	Continued to September 6, 1996 for motions.
Sept 6	Bohn, Jr., J., presiding: K. Gordon, Court Stenographer
	Continued to September 26, 1996 for trial assignment.
Sept 26	Bohn, Jr., J., presiding: K. Gordon, Court Stenographer
	Continued to December 9, 1996 for trial.
Sept 27	Bohn, Jr., J., presiding: P. Flaherty, Court Stenographer
	Motion for Discovery of Complainant's Relevant Counseling and Treatment History and Affidavit-allowed as amended. (Bohn, Jr., J.) See 20 in 96CR 832
Nov 26	Motion to Continue Case filed and after hearing allowed. See 21 in 96CR 832
	Continued to February 3, 1997 for trial.
1997	Welch, J., presiding: M. Hezekiah, Court Stenographer
Jan 15	Motion to Continue-Allowed. (Bohn, Jr., J.) See 22 in 96CR 832
	Continued to March 17, 1997.
	Bohn, Jr., J., presiding:
March 17	Continued to March 25, 1997 for trial assignment.
	Cratsley, J., presiding: A. Green, Court Stenographer
March 25	List of Potential Witnesses filed. See 23 in 96CR 832
	Continued to May 27, 1997 for trial.
	Cratsley, J., presiding: A. Green, Court Stenographer
	ORDER to Produce Records Issued to Department of Social Services. See 24 in 96CR 832
	Order to Produce Records Issued to Children's Hospital. See 25 in 96CR 832
	Order to Produce Records Issued to Pediatric Professional Associates, P.C.
	See 26 in 96CR 832
	Order to produce Records Issued to Saint's Memorial Medical Center. See 27 in 96CR 832

SA0021

COMMONWEALTH VS. Angel Rivera

96 No. CR- 836

PAGE TWO

1997		
April 10		Impounded Records from Childrens Hospital Received. See 28 in 9677CR 822
April 14		Impounded Records received from Pediatric Professional Association Received See 29 in 96CR 832
April 30		Impounded Records From Saints Memorial Medical Center Received See #30 in 9677CR-832
May 6		Motion for Indigent Summons filed and after hearing ALLOWED. See 31 in 96CR 832
May 7		Summons Issued. See 32 in 96CR 832
May 16		Motion to Continue Case filed after hearing and allowed. See #33 in 96CR 832
		Continued to May 29, 1997 for Trial.
May 23		Whitehead, J., presiding: M. Hezekiah, Court Stenographer
		Motion for Funds for Expert-Allowed. (Whitehead, J.) See #34 in 96CR 832.
May 27		Continued to May 29, 1997.
		Welch, J., presiding: M. Hezekiah, Court Stenographer
May 29		Continued to June 2, 1997 at Lawrence for Trial.
		Cratsley, J., presiding: M. Hezekiah, Court Stenographer
		Impounded Recorded from Department of Social Services Received. See #35 in 96CR 832.
June 2		Jury Trial Begins.
		Memo of Trial filed. See #36 in 96CR 832.
		Motion to Propound Questions to Prospective Jurors Individually filed. See #37 in 96CR 832.
		List of Potential Witnesses filed. See #38 in 96CR 832.
		Commonwealth's List of Potential Witnesses filed. See #39 in 96CR 832.
		Motion in Limine: Request for Instruction on Fresh Complaint filed and Allowed. See #40 in 96CR 832.
		Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed. See #41 in 96CR 832.
		Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed. See #42 in 96CR 832.
		Motion in Limine: Alleged Bad Acts filed and Withdrawn upon representation that no such evidence will be elicited. See #43 in 96CR 832.
		Memorandum in Support of Defendant's Motion to Exclude Evidence of Prior Bad Acts filed. See #44 in 96CR 832.
		Motion for an In-Camera hearing on the Admission of Evidence filed and Motion for in-camera hearing is Allowed. See #45 in 96CR 832.
		Motion in Limine to Exclude "Expert" Testimony of Treating Physician filed. See #46 in 96CR 832.
		Commonwealth's Motion in Limine filed and Referred to Context of Trial

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

SA0022

1997

June 2

Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #48 in 96CR 832.

Motion in Limine to Exclude the term "Victim" filed and Allowed. See #49 in 96CR 832.

Motion for Bill of Particulars-after hearing, defendant's Motion is Denied. See Commonwealth V. Sanchez. See #50 in 96CR 832.

Motion to Dismiss, Affidavit and Memorandum of Law-After hearing Motion is Denied. See #51 in 96CR 832.

Motion for Sequestration of Witnesses During Trial filed and Allowed. See #52 in 96CR 832.

Motion in Limine - Disclosure filed and Denied. See #53 in 96CR 832.

Motion in Limine filed and Allowed. See #54 in 96CR 832.

Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial. See #55 in 96CR 832.

Motion in Limine Re: Opinion of Guilt filed and Allowed. See #56 in 96CR 832.

Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to Two fresh complaint witnesses. See #57 in 96CR 832.

Bohn, J., Presiding: E. Vega, Court Stenographer

Motion #46-Denied. (Bohn, J.)

Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.) See #58 in 96CR 832.

June 5

Defendant's Request for Instruction filed. See #59 in 96CR 832.

Commonwealth's Request for Jury Instructions filed. See #60 in 96CR 832.

Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.) See #61 in 96CR 832.

June 6

2

VERDICT: Not Guilty.

Defendant Discharged.

SA0023

COMMONWEALTH VS.

ANGEL RIVERA

9677CR 0837

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

OFFENSE: Indecent Assault and Battery on a Child, Chap. 265, sec. 13B.

PLACE: Lawrence

SURETY AND AMOUNT:

PROSECUTOR: Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970

COUNSEL: Committee for Public Counsel Services, 1 Salem Green, Salem 01970

Peter M. Onek, Esq., CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA. 02210

JUSTICE DISPOSING OF CASE: Bohn, J.

INDICTMENT FILED:

1996 Mar. 20 1

April 11

Antonia Nedder, Assistant District Attorney, appears for the Commonwealth.

Jill Sellers, Esq., appointed and appears for the defendant. See 2 in 96CR 832

Defendant waives reading of the indictment and pleads not guilty.

Defendant ordered to recognize same Bail as District Court.

Continued to May 9, 1996.

Cowin, J. presiding: K. Gordon, Court Stenographer

Lawrence District Court Notified Re: Bail. See 3 in 96CR 832

Continued to May 21, 1996.

Borenstein, J. presiding: M. Hezekiah, Court Stenographer

Pretrial Conference Report filed. See 5 in 96CR 832

ORDER Re: 51A and 51B reports. (Borenstein, J.) See 6 in 96CR 832

Motion for List of Potential Witnesses and Their Probation Records Filed

and after hearing allowed. See 7 in 96CR 832

Motion for Production of Department of Social Services Records-agreed. See

8 in 96CR 832

Motion for Discovery of Booking Sheet and Photographs-agreed. See 9 in 96CR 832

Motion for Discovery of Statements of Defendant-agreed. See 10 in 96CR 832

Motion for Exculpatory Evidence-agreed. See 11 in 96CR 832

Motion for Discovery of Medical Evidence-agreed. See 12 in 96CR 832

Motion for Disclosure of Miranda Card and Disclosure of Names of Officers

Present for Miranda Warnings and Defendant's Statements-agreed. See 13 in

96CR 832

SA0024

1996

May 21

Motion for Disclosure of Prior and Subsequent Bad Acts-agreed. See 15 in 96CR 832

Motion for Rewards and Promises-agreed. See 16 in 96CR 832

Motion for Discovery of Previous Interviews with Alleged Victim-agreed. See

17 in 96CR 832

Motion for Discovery of Physical Scientific and Expert Evidence-agreed. See

18 in 96CR 832

Continued to June 20, 1996.

Borenstein, J. presiding: B. Vega, Court Stenographer

June 20

Continued to July 16, 1996.

July 16

Whitehead, J. presiding: B. Vega, Court Stenographer

Continued to August 19, 1996 for motions.

Bohn, J. presiding: A. Green, Court Stenographer

Continued to August 28, 1996 for motion to dismiss.

Bohn, Jr. J., presiding: A. Green, Court Stenographer

Continued to September 3, 1996 for motions.

Bohn, Jr. J. presiding: K. Gordon, Court Stenographer

Continued to September 26, 1996 for trial assignment.

Bohn, Jr. J., presiding: K. Gordon, Court Stenographer

Continued to December 9, 1996 for trial.

Bohn, Jr. J., presiding: P. Flaherty, Court Stenographer

Motion for Discovery of Complainant's Relevant Counseling and Treatment History

and Affidavit-allowed as amended. (Bohn, Jr. J.) See 20 in 96CR 832

Motion to Continue Case filed and after hearing allowed. See 21 in 96CR 832

Continued to February 3, 1997 for trial.

Welch, J. presiding: M. Hezekiah, Court Stenographer

1997

Motion to Continue-Allowed. (Bohn, Jr. J.) See 22 in 96CR 832

Continued to March 17, 1997.

Bohn, Jr. J., presiding:

Continued to March 25, 1997 for trial assignment.

Cratsley, J., presiding: A. Green, Court Stenographer

List of Potential Witnesses filed. See 23 in 96CR 832

Continued to May 27, 1997 for trial.

Cratsley, J., presiding: A. Green, Court Stenographer

ORDER to Produce Records issued to Department of Social Services. See 24 in 96CR 832

Order to Produce Records issued to Children's Hospital. See 25 in 96CR 832

Order to Produce Records issued to Pediatric Professional Associates, P.C.

See 26 in 96CR 832

Order to Produce Records issued to Saint's Memorial Medical Center. See 27

in 96CR 832

SA0025

96 No. CR-837
PAGE TWO

COMMONWEALTH VS. Angel Rivera

1997	
April 10	Impounded Records from Childrens Hospital Received. See 28 in 9677CR 822
April 14	Impounded Records from Pediatric Professional Association Received. See 29 in 822
April 30	Impounded Records From Saints Memorial Medical Center Received See #30 in 9677CR-832
May 6	Motion for Indigent Summons filed and after hearing ALLOWED. See 31 in 96CR 832
May 7	Summons Issued. See 32 in 96CR 832
May 16	Motion to Continue Case filed after hearing and allowed. See #33 in 96CR 832.
	Continued to May 29, 1997 for Trial.
May 23	Whitehead, J., presiding: M. Hezekiah, Court Stenographer Motion for Funds for Expert-Allowed. (Whitehead, J.) See #34 in 96CR 832.
May 27	Continued to May 29, 1997.
May 29	Welch, J., presiding: M. Hezekiah, Court Stenographer Continued to June 2, 1997 at Lawrence for Trial. Cratsley, J., presiding: M. Hezekiah, Court Stenographer Impounded Records from Department of Social Services Received. See #35 in 96CR 832.
June 2	Jury Trial Begins. Memo of Trial filed. See #36 in 96CR 832. Motion to Propound Questions to Prospective Jurors Individually filed. See #37 in 96CR 832. List of Potential Witnesses filed. See #38 in 96CR 832. Commonwealth's List of Potential Witnesses filed. See #39 in 96CR 832. Motion in Limine: Request for Instruction on Fresh Complaint filed and Allowed. See #40 in 96CR 832. Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed. See #41 in 96CR 832. Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed. See #42 in 96CR 832. Motion in Limine: Alleged Bad Acts filed and Withdrawn upon representation that no such evidence will be elicited. See #43 in 96CR 832. Memorandum in Support of Defendant's Motion to Exclude Evidence of Prior Bad Acts filed. See #44 in 96CR 832. Motion for an In-Camera hearing on the Admission of Evidence filed and Motion for in-camera hearing is Allowed. See #45 in 96CR 832. Motion in Limine to Exclude "Expert" Testimony of Treating Physician filed. See #46 in 96CR 832. Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #47 in 96CR 832.

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

SA0026

1997		
June 2		Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #48 in 96CR 832.
		Motion in Limine to Exclude the term "Victim" filed and Allowed. See #49 in 96CR 832.
		Motion for Bill of Particulars-after hearing, defendant's Motion is Denied. See Commonwealth v. Sanchez. See #50 in 96CR 832.
		Motion to Dismiss, Affidavit and Memorandum of Law-After hearing Motion is Denied. See #51 in 96CR 832.
		Motion for Sequestration of Witnesses During Trial filed and Allowed. See #52 in 96CR 832.
		Motion in Limine - Disclosure filed and Denied. See #53 in 96CR 832.
		Motion in Limine filed and Allowed. See #54 in 96CR 832.
		Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial. See #55 in 96CR 832.
		Motion in Limine Re: Opinion of Guilt filed and Allowed. See #56 in 96CR 832.
		Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to Two fresh complaint witnesses. See #57 in 96CR 832.
		Bohn, J., presiding: E. Vega, Court Stenographer
June 4		Motion #46-Denied. (Bohn, J.)
		Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.) See #58 in 96CR 832.
June 5		Defendant's Request for Instruction filed. See #59 in 96CR 832.
		Commonwealth's Request for Jury Instructions filed. See #60 in 96CR 832.
June 6	1	Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.) See #61 in 96CR 832.
	2	VERDICT: Guilty of Indecent Assault and Battery upon a Child Under the Age of Fourteen Years.
	3	SENTENCE: Four (4) years to Five (5) years committed to Massachusetts Correctional Institution Cedar Junction; Concurrent with 96CR 832 and 96CR 834. Credit of Zero (0) Days.
		All Fees and Assessments waived.
		Notified Appeals 278/28 and Appellate Division.
		Notified in Open Court Sex Offender Registry (Defendant refuses to sign the notice)
		Notification Relative to Sex Offender Registration under Chapter 6 Section 178E(c). See #64 in 96CR 832.
		Notice of Appeal filed. See #65 in 96CR 832.
		Motion for Stay of Execution Pending Appeal filed and Denied. See #66 in 96CR 832.
June 10		Bohn, J., presiding: M. Parziale, Court Stenographer
		Request for Transcript received. See #67 in 96CR 832.

SA0027

COMMONWEALTH VS. ANGEL RIVERA

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

Notice of Assembly of Record and transcripts transmitted to the Appeals Court. See 80 in 96CR 832.

SA0028

COMMONWEALTH VS.

ANGEL RIVERA

9677CR 0838

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

OFFENSE: Indecent Assault and Battery on a Child, Chap. 265, sec. 13B.

PLACE: Lawrence

SURETY AND AMOUNT:

PROSECUTOR: Antonia Nedder, A.D.A., Museum Place, 1 East India Sq. Mall, Salem 01970

COUNSEL: Committee for Public Counsel Services, 1 Salem Green, Salem 01970
Peter M. Onek, Esq., CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA. 02210

JUSTICE DISPOSING OF CASE: Bohn, J.

INDICTMENT FILED:

1996 Mar. 20 1

April 11

Antonia Nedder, Assistant District Attorney, appears for the Commonwealth.

Jill Sellers, Esq., appointed and appears for the defendant. See 2 in 96CR 832

Defendant waives reading of the indictment and pleads not guilty.

Defendant ordered to recognize Same Bail as District Court.

Continued to May 9, 1996.

Cowin, J. presiding: K. Gordon, Court Stenographer

Lawrence District Court Notified Re: Bail. See 3 in 96CR 832

Continued to May 21, 1996.

Borenstein, J. presiding: M. Hezekiah, Court Stenographer

Pretrial Conference Report filed. See 5 in 96CR 832

ORDER Re: 51A and 51B reports. (Borenstein, J.) See 6 in 96CR 832

Motion for List of Potential Witnesses and Their Probation Records filed

and after hearing allowed. See 7 in 96CR 832

Motion for Production of Department of Social Services Records-agreed. See

8 in 96CR 832

Motion for Discovery of Booking Sheet and Photographs-agreed. See 9 in 96CR 832

Motion for Discovery of Statements of Defendant-agreed. See 10 in 96Cr 832

Motion for Exculpatory Evidence-agreed. See 11 in 96CR 832

Motion for Discovery of Medical Evidence-agreed. See 12 in 96CR 832

Motion for Disclosure of Miranda Card and Disclosure of Names of Officers

Present for Miranda Warnings and Defendant's Statements-agreed. See 13 in

96CR 832

SA0029

1996		
May 21		Motion for Disclosure of Prior and Subsequent Bad Acts-agreed. See 15 in 96CR 832
		Motion for Rewards and promises-agreed. See 16 in 96CR 832
		Motion for Discovery of Previous Interviews with Alleged Victim-agreed. See 17 in 96CR 832
		Motion for Discovery of Physical Scientific and Expert Evidence-agreed. See 18 in 96CR 832
		Continued to June 20, 1996.
		Borenstein, J. presiding: B. Vega, Court Stenographer
June 20		Continued to July 16, 1996.
July 16		Whitehead, J. presiding: B. Vega, Court Stenographer
		Continued to August 19, 1996 for motions.
		Bohn, J. presiding: A. Green, Court Stenographer
August 19		Continued to September 3, 1996 for motions.
		Bohn, Jr., J. presiding: K. Gordon, Court Stenographer
Sept 3		Continued to September 6, 1996 for motions.
		Bohn, Jr., J. presiding: K. Gordon, Court Stenographer
Sept 6		Continued to September 26, 1996 for trial assignment.
		Bohn, Jr., J. presiding: K. Gordon, Court Stenographer
Sept 26		Continued to December 9, 1996 for trial.
		Bohn, Jr., J. presiding: P. Flaherty, Court Stenographer
Sept 27		Motion for Discovery of Complainant's Relevant Counseling and Treatment History and Affidavit-allowed as amended. (Bohn, Jr., J.) See 20 in 96CR 832
Nov 26		Motion to Continue Case filed and after hearing allowed. See 21 in 96CR 832
		Continued to February 3, 1997 for trial.
		Welch, J. presiding: M. Hezekiah, Court Stenographer
1997		
Jan 15		Motion to Continue-Allowed. (Bohn, Jr., J.) See 22 in 96CR 832
		Continued to March 17, 1997.
		Bohn, Jr., J. presiding:
March 17		Continued to March 25, 1997 for trial assignment.
		Cratsley, J., presiding: A. Green, Court Stenographer
March 25		List of Potential Witnesses filed. See 23 in 96CR 832
		Continued to May 27, 1997 for trial.
		Cratsley, J., presiding: A. Green, Court Stenographer
		ORDER to Produce Records issued to Department of Social Services. See 24 in 96CR 832
		Order to Produce Records issued to Children's Hospital. See 25 in 96CR 832
		Order to Produce Records issued to Pediatric Professional Associates, P.C.
		See 26 in 96CR 832
		Order to produce Records issued to Saint's Memorial Medical Center. See 27 in 96CR 832

SA0030

COMMONWEALTH VS. Angel Rivera

96 No. CR- 838
PAGE two

1997	
April 10	Impounded Records from Childrens Hospital Received. See 28 in 9677CR 822
April 14	Impounded Records from Pediatric Professional Association Received. See 29 in 822
April 30	Impounded Records From Saints Memorial Medical Center Received See #30 in 9677CR-832
May 6	Motion for Indigent Summons filed and after hearing ALLOWED. See 31 in 96CR 832
May 7	Summons Issued. See 32 in 96CR 832
MAY 16	Motion to Continue Case filed after and allowed. See #33 in 96CR 832
	Continued to May 29, 1997 for Trial.
	Whitehead, J., presiding: M. Hezekiah, Court Stenographer
May 23	Motion for Funds for Expert-Allowed. (Whitehead, J.) See #34 in 96CR 832.
May 27	Continued to May 29, 1997.
	Welch, J., presiding: M. Hezekiah, Court Stenographer
May 29	Continued to June 2, 1997 at Lawrence for Trial.
	Cratsley, J., presiding: M. Hezekiah, Court Stenographer
	Impounded Records from Department of Social Services Received. See #35 in 96CR 832.
June 2	Jury Trial Begins.
	Memo of Trial filed. See #36 in 96CR 832.
	Motion to Propound Questions to Prospective Jurors Individually filed. See #37 in 96CR 832.
	List of Potential Witnesses filed. See #38 in 96CR 832.
	Commonwealth's List of Potential Witnesses filed. See #39 in 96CR 832.
	Motion in Limine: Request for Instruction on Fresh Complaint filed and Allowed.
	See #40 in 96CR 832.
	Motion for Voir Dire on Fresh Complaint and Memorandum filed and Allowed. See #41 in 96CR 832.
	Motion for Voir Dire of Fresh Complaint Witnesses filed and Allowed. See #42 in 96CR 832.
	Motion in Limine: Alleged Bad Acts filed and Withdrawn upon representation that no such evidence will be elicited. See #43 in 96CR 832.
	Memorandum in Support of Defendant's Motion to Exclude Evidence of Prior Bad Acts filed. See #44 in 96CR 832.
	Motion for an In-Camera hearing on the Admission of Evidence filed and Motion for in-camera hearing is Allowed. See #45 in 96CR 832.
	Motion in Limine to Exclude "Expert" Testimony of Treating Physician filed.
	See #46 in 96CR 832.
	Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #47 in 96CR 832.

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

SA0031

1997		
June 2		Commonwealth's Motion in Limine filed and Referred to Context of Trial. See #48 in 96CR 832.
		Motion in Limine to Exclude the term "Victim" filed and Allowed. See #49 in 96CR 832.
		Motion for Bill of Particulars-after hearing, defendant's Motion is Denied. See Commonwealth v. Sanchez. See #50 in 96CR 832.
		Motion to Dismiss, Affidavit and Memorandum of Law-After hearing Motion is Denied. See #51 in 96CR 832.
		Motion for Sequestration of Witnesses During Trial filed and Allowed. See #52 in 96CR 832.
		Motion in Limine - Disclosure filed and Denied. See #53 in 96CR 832.
		Motion in Limine filed and Allowed. See #54 in 96CR 832.
		Motion in Limine to Exclude Medical Records filed and Referred to Context of Trial. See #55 in 96CR 832.
		Motion in Limine Re: Opinion of Guilt filed and Allowed. See #56 in 96CR 832.
		Motion in Limine to Limit Number of Fresh Complaint Witnesses filed and Allowed to the extent that the Commonwealth will be limited to two fresh complaint witnesses. See #57 in 96CR 832.
June 4		Bohn, J., presiding: E. Vega, Court Stenographer
		Motion #46-Denied. (Bohn, J.)
		Motion for Required Finding of Not Guilty at Close of Commonwealth's Case-after hearing, defendant's Motion is Denied. (Bohn, J.) See #58 in 96CR 832.
June 5		Defendant's Request for Instruction filed. See #59 in 96CR 832.
		Commonwealth's Request for Jury Instructions filed. See #60 in 96CR 832.
June 6		Motion for Required Finding of Not Guilty at Close of All the Evidence filed and Denied. (Bohn, J.) See #61 in 96CR 832.
	2	VERDICT: Guilty of Indecent Assault and Battery on a Child Under the Age of Fourteen Years.
	3	SENTENCE: Four (4) years to Five (5) years committed to Massachusetts Correctional Institution Cedar Junction; Concurrent with 96CR 832, 96CR 834 and 96CR 837. Credit of Zero (0) Days.
		All Fees and Assessments waived.
		Notified Appeals 278/28 and Appellate Division.
		Notified in Open Court Sex Offender Registry (Defendant refuses to sign the notice.)
		Notification Relative to Sex Offender Registration under Chapter 6 Section 178B9c.)
		See #64 in 96CR 832.
		Notice of Appeal filed. See #65 in 96CR 832.
		Motion for Stay of Execution Pending Appeal filed and Denied.
		Bohn, J., presiding: M. Parziale, Court Stenographer

SA0032

**Commonwealth of Massachusetts
ESSEX SUPERIOR COURT
Case Summary
Criminal Docket**

Commonwealth v Rivera, Angel

Details for Docket: ESCR1996-00832

Case Information

Docket Number:	ESCR1996-00832	Caption:	Commonwealth v Rivera, Angel
Entry Date:	03/20/1996	Case Status:	CtRm 1 (Salem)
Status Date:	09/16/2004	Session:	Disposed (appeal denied)
Lead Case:	NA	Deadline Status:	
Trial Deadline:		Jury Trial:	NO

Parties Involved

2 Parties Involved in Docket: ESCR1996-00832

Party Involved:		Role:	Defendant
Last Name:	Rivera	First Name:	Angel
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Party Involved:		Role:	Plaintiff
Last Name:	Commonwealth	First Name:	
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Attorneys Involved

No Attorneys found for Docket: ESCR1996-00832.

SA0034

There are currently no attorneys associated with this case.

Calendar Events

No Calendar Events found for Docket: ESCR1996-00832.

There are currently no calendar events associated with this case.

Full Docket Entries

45 Docket Entries for Docket: ESCR1996-00832

Entry Date:	Paper No:	Docket Entry:
03/20/1996	1	Indictment returned
06/06/1997		RE Offense 1:Guilty verdict
06/06/1997		RE Offense 2:Guilty verdict
06/06/1997		RE Offense 3:Guilty verdict
06/06/1997		RE Offense 4:Guilty verdict
06/06/1997		RE Offense 5:Not guilty verdict
06/06/1997		RE Offense 6:Guilty verdict
06/06/1997		RE Offense 7:Guilty verdict
09/16/2000	81	Status at conversion
09/18/2001	82	Rescript received from Appeals Court; judgment affirmed Dated <u>August</u>
09/18/2001	82	<u>20</u> , 2001 Nov. 20, 2001
01/30/2002	83	AMENDED SENTENCE: 96-832 - Eight Years to Eight Years (8) and One (1)
01/30/2002	83	Day Committed to the Massachusetts Correctional Institution Cedar
01/30/2002	83	Junction. Credit of 8 Days
01/30/2002	84	AMENDED SENTENCE: 96-834 - Eight Years to Eight Years (8) and One (1)
01/30/2002	84	Day Committed to the Massachusetts Correctional Institution Cedar
01/30/2002	84	Junction. Concurrent with 96-832 Credit of 8 Days
01/30/2002	85	AMENDED SENTENCE: 96-837 - Eight Years to Eight Years (8) and One (1)
01/30/2002	85	Day Committed to the Massachusetts Correctional Institution Cedar
01/30/2002	85	Junction. Concurrent with 96-832 Credit of 8 Days
01/30/2002	86	AMENDED SENTENCE: 96-838 - Eight Years to Eight Years (8) and One (1)
01/30/2002	86	Day Committed to the Massachusetts Correctional Institution Cedar
01/30/2002	86	Junction. Concurrent with 96-832 Credit of 8 Days
12/18/2002	87	Motion for Defendant to Receive Jail Credit Filed. Copy of Amended
12/18/2002	87	Mit Sent to Defendant with Jail Credit on it
02/24/2003	88	Motion by Deft: For Release From Unlawful Restraint Pursuant To Rule

SA0035

02/24/2003	88	30(A), Memorandum of Law and Points Of Authority In Support Of and
02/24/2003	88	Affidavit. - Filed. copy of motion and docket sheets to Judge Bohn.
02/24/2003	89	Motion by Deft: For Appointment of Counsel - Filed. copy of motion
02/24/2003	89	and docket sheets to Judge Bohn.
03/11/2003	90	Request by Records Department at MCI Shirley for copy of amended
03/11/2003	90	mittimus, sent print-out which they OK'd.
03/27/2003		Motion (P#88): Denied without a hearing as provided for by Mass R.
03/27/2003		Crim. P. 30(c)(3). See endorsement (Bohn, Justice). Copies mailed
03/27/2003		4/1/03
03/27/2003		Motion (P#89): Denied absent a more specific showing (Bohn, Justice).
03/27/2003		Copies mailed 4/1/03
04/09/2003	91	NOTICE of APPEAL FILED by Angel Rivera
08/18/2003	92	Motion by Deft: to transmit appeal papers.
09/23/2003	93	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
09/23/2003		Notice of completion of assembly of record sent to clerk of Appeals
09/23/2003		Court and attorneys for the Commonwealth and defendant.
09/25/2003	94	Notice of Entry of appeal received from the Appeals Court
09/16/2004	95	Rescript received from Appeals Court; Order Denying Relief judgment
09/16/2004	95	AFFIRMED

Charges

7 Charges for Docket: ESCR1996-00832

No.	Charge Description:	Indictment:	Status:
1	Rape & abuse of child under 16	ESCR1996-00834	Guilty verdict
2	Rape & abuse of child under 16	ESCR1996-00832	Guilty verdict
3	Rape & abuse of child under 16	ESCR1995-00836	Not guilty verdict
4	Rape & abuse of child under 16	ESCR1996-00835	Guilty verdict
5	Rape & abuse of child under 16	ESCR1996-00833	Guilty verdict
6	Indecent assault & battery on child under 14	ESCR1996-00837	Guilty verdict
7	Indecent assault & battery on child under 14	ESCR1996-00838	Guilty verdict

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SA0036

753 N.E.2d 823, 52 Mass.App.Ct. 321, Com. v. Rivera, (Mass.App.Ct. 2001)

Page 1

*823 753 N.E.2d 823

52 Mass.App.Ct. 321

Appeals Court of Massachusetts,
Essex.**COMMONWEALTH**

v.

Angel RIVERA.**No. 99-P-591.**

Argued Dec. 11, 2000.

Decided Aug. 20, 2001.

Defendant was convicted in the Superior Court Department, Essex County, Robert H. Bohn, J., of four counts of rape of a child and two counts of indecent assault and battery upon a child. Defendant appealed. The Appeals Court, Duffly, J., held that: (1) trial judge acted within his discretion in excluding certain evidence during cross-examination of victim; (2) trial judge properly limited defendant's cross-examination of victim by excluding questions about allegations made by victim to her teacher; (3) prosecutor did not improperly vouch for victim's credibility during closing argument; (4) prosecutor did not misstate victim's testimony during closing argument; (5) improper closing comment made by prosecutor was not prejudicial error; and (6) prosecutor's improper attack on character of defense witness did not create substantial likelihood of miscarriage of justice.

Affirmed.

Brown, J., concurred with opinion.

West Headnotes

[1] Witnesses ⚡ 270(2)

410 ----

410III Examination

410III(B) Cross-Examination

410k270 Cross-Examination as to Irrelevant,
Collateral, or Immaterial Matters410k270(2) Particular Matters as Subjects of
Cross-Examination.

Trial judge acted within his discretion, during defendant's cross-examination of victim in prosecution for rape of a child, in excluding statement in victim's medical record which was dated before defendant's alleged sexual abuse began, purporting to establish that

victim had previously disclosed a sexual assault to her doctor and that her mother knew about it, though defendant argued that such evidence refuted victim's claim that she had been too ashamed to report defendant's abuse earlier.

[2] Criminal Law ⚡ 338(1)

110 ----

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k338 Relevancy in General

110k338(1) In General.

Whether evidence is legally relevant is a question which is generally left to the discretion of the trial judge.

[3] Criminal Law ⚡ 661

110 ----

110XX Trial

110XX(C) Reception of Evidence

110k661 Necessity and Scope of Proof.

It is within the judge's discretion to exclude evidence that is too remote in time or too speculative.

[4] Witnesses ⚡ 372(2)

410 ----

410IV Credibility and Impeachment

410IV(C) Interest and Bias of Witness

410k372 Cross-Examination to Show Interest or

Bias

410k372(2) Inquiry as to Particular Acts or Facts
Tending to Show Interest or Bias.

[See headnote text below]

[4] Witnesses ⚡ 374(2)

410 ----

410IV Credibility and Impeachment

410IV(C) Interest and Bias of Witness

410k374 Competency of Impeaching Evidence

410k374(2) Declarations, Statements, or
Admissions of Witness.

Trial judge properly limited defendant's cross-examination of victim, in prosecution for rape of a child, by excluding questions about victim's alleged report to her teacher that her mother had been neglecting her and that she wanted to be removed from her mother's house, though defendant argued this

753 N.E.2d 823, 52 Mass.App.Ct. 321, Com. v. Rivera, (Mass.App.Ct. 2001)

Page 2

evidence showed victim had motive to lie about defendant's abuse in order to get out of her mother's house which defendant shared; there was insufficient showing of nexus between evidence and defense theory of fabrication, and significant amount of time had passed since victim's report to teacher.

[5] Criminal Law ☞ 1171.1(2.1)

110 ----

110XXIV Review

110XXIV(Q) Harmless and Reversible Error

110k1171 Arguments and Conduct of Counsel

110k1171.1 In General

110k1171.1(2) Statements as to Facts,
Comments, and Arguments

110k1171.1(2.1) In General.

When a defendant objects to the prosecutor's statements made during a closing argument, the standard for determining whether a conviction must be reversed because of inappropriate statements is whether the improper statements made by the prosecutor constituted prejudicial error.

[6] Criminal Law ☞ 720(5)

110 ----

110XX Trial

110XX(E) Arguments and Conduct of Counsel

110k712 Statements as to Facts, Comments, and
Arguments

110k720 Comments on Evidence or Witnesses

110k720(5) Credibility and Character of
Witnesses.

Prosecutor did not improperly vouch for victim's credibility when he commented, during closing argument in trial for rape of a child, that victim did not "have to subject herself to the humiliation of talking to countless strangers about horribly embarrassing personal experiences in her young life"; prosecutor was entitled to argue from the evidence why the victim should be believed, given that victim's credibility was at issue, and prosecutor later put his argument in context.

[7] Criminal Law ☞ 726

110 ----

110XX Trial

110XX(E) Arguments and Conduct of Counsel

110k726 Responsive Statements and Remarks.

During closing argument in defendant's trial for rape

of a child, prosecutor did not misstate victim's testimony about her mother's actions when he commented about what victim's testimony likely meant, in response to defendant's argument that victim had lied when "she said[]" her mother raped her" or when he summarized victim's testimony on this subject.

[8] Criminal Law ☞ 719(1)

110 ----

110XX Trial

110XX(E) Arguments and Conduct of Counsel

110k712 Statements as to Facts, Comments, and
Arguments

110k719 Matters Not Sustained by Evidence

110k719(1) In General.

[See headnote text below]

[8] Criminal Law ☞ 730(7)

110 ----

110XX Trial

110XX(E) Arguments and Conduct of Counsel

110k730 Action of Court

110k730(7) Matters Not Sustained by Evidence.

Prosecutor's comment during closing argument, in trial for rape of a child, that victim's mother could have gotten ride to victim's counseling sessions from one of the "fifteen or so people sitting in the back of the courtroom" was improper, where there was nothing in the evidence to suggest that any of the people sitting in the courtroom were among those victim's mother had asked for a ride, but comment was not prejudicial error; judge instructed jury that closing argument was not evidence and that jurors were responsible for assessing credibility of evidence, and prosecutor's comment went only to collateral issue of possible bias of victim's mother.

[9] Criminal Law ☞ 726

110 ----

110XX Trial

110XX(E) Arguments and Conduct of Counsel

110k726 Responsive Statements and Remarks.

Prosecutor's comments, during closing argument in trial for rape of a child, that victim's mother was in "denial" about defendant's actions and that victim's mother "didn't want to believe" what was going on constituted appropriate response to defense counsel's closing argument that victim's mother was credible witness based on her tearful denials that she had ever

753 N.E.2d 823, 52 Mass.App.Ct. 321, Com. v. Rivera, (Mass.App.Ct. 2001)

Page 3

seen defendant touch her daughter in sexual way.

[12] Criminal Law 1037.1(1)

[10] Criminal Law 720(5)

110 ----

110XX Trial

110XX(E) *823 Arguments and Conduct of Counsel

110k712 Statements as to Facts, Comments, and Arguments

110k720 Comments on Evidence or Witnesses

110k720(5) Credibility and Character of Witnesses.

[See headnote text below]

[10] Criminal Law 1037.1(2)

110 ----

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1037 Arguments and Conduct of Counsel

110k1037.1 In General

110k1037.1(2) Particular Statements, Arguments, and Comments.

Prosecutor improperly attacked character of defense witness, during closing argument in trial for rape of a child, when he called the witness "nothing more than a seventeen-year-old punk" and a "stooge," but such comment did not create a substantial likelihood of a miscarriage of justice, in light of prosecutor's argument as a whole, judge's instructions to jury, and evidence produced at trial.

[11] Criminal Law 1037.1(1)

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110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1037 Arguments and Conduct of Counsel

110k1037.1 In General

110k1037.1(1) Arguments and Conduct in General.

Defendant's failure to object at trial to certain comments made by prosecutor during closing argument limited the inquiry of the Appeals Court to whether the comments created a substantial likelihood of a miscarriage of justice.

110 ----

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1037 Arguments and Conduct of Counsel

110k1037.1 In General

110k1037.1(1) Arguments and Conduct in General.

In analyzing whether prosecutor's closing remarks created a substantial likelihood of a miscarriage of justice, the Appeals Court must view the prosecutor's remarks considering the argument as a whole, the judge's instructions to the jury, and the evidence produced at trial.

*824 Allison Young Beauparlant, Haverhill, for the defendant.

James A. Janda, Assistant District Attorney, for the Commonwealth.

Present BROWN, GILLERMAN & DUFFLY, JJ.

*825 DUFFLY, J.

Convicted by a Superior Court jury of four counts of rape of a child and two counts of indecent assault and battery upon a child, the defendant appeals, claiming evidence should have been admitted that the complaining witness had made a [52 Mass.App.Ct. 322] prior allegation of sexual assault, that his cross-examination of her was impermissibly restricted, and that the Commonwealth's closing argument was improper in several respects. We affirm the judgments.

According to the testimony of the complaining witness, Jane, (FN1) in January of 1990, the defendant--who had been living with Jane, her mother, and two sisters since Jane was very young, and to whom she referred throughout the trial as her "stepfather"--began coming into her bedroom late at night, after arriving home from work. Born on October 22, 1981, Jane was nine years old when the defendant began to kiss and lick or suck her "titties." Some weeks later, the defendant began to put his hands in her pants and his finger in her vagina; he also licked and put his tongue into her vagina. Jane testified that the sexual encounters, which "shocked and scared" her, took place approximately twice each week, continuing until just before her fourteenth birthday. During the encounters, Jane said she would sometimes move or

turn away, but that the defendant persisted. A few times, Jane called out "Mommy." Sometimes the sexual encounters occurred while her little sister slept in the same bed as Jane, and Jane would try to kick or nudge her awake. If her sister woke up, and on one occasion when her mother came into the bedroom, the defendant would pretend he was just checking on them.

The final incident occurred in October of 1995, when, according to Jane's testimony, the defendant "put his penis in me--He pulled my pants down, and he tried to put his penis in me, and I moved." Jane said the defendant's penis was "touching my vagina," that he pushed down once or twice, and that "[i]t hurt a little bit." Just after her fourteenth birthday, Jane and the defendant had a conversation during which he asked her if she "liked what he did to [her] at nighttime." Jane testified, "I told him, 'No' and to stop. And he said, 'Okay.' And he got mad and he left." After this conversation, the defendant did not sexually touch Jane again.

Jane told no one of these incidents until around the third week of January, 1996, when she confided in her best friend, [52 Mass.App.Ct. 323] who then relayed to an adult what Jane had told her. The defendant was arrested the next day.

There was no direct evidence corroborating Jane's testimony. The theory of defense was that Jane fabricated the story of sexual abuse because she resented the restrictions placed upon her by her mother and the defendant, and wished to live with her father where she was allowed to come in late, have friends over, and, most significantly, have a boyfriend. Defense counsel, expanding on this theory, argued in closing that when a person, who may have been related to the defendant, saw Jane being hugged by a boy and yelled to her that, "He's not supposed to be hugging you," Jane decided to leave her mother's house and to fabricate the tale of sexual abuse in order to accomplish this goal. She then told her best friend about the sexual abuse in order to test out her story, and so that her friend would tell others.

[1][2][3] *Exclusion of evidence.* During cross-examination of Jane, the defendant *826 sought to introduce a statement in Jane's medical record dated October 1, 1988, that purported to establish that Jane had previously disclosed a sexual assault to her doctor, and that her mother knew about it. (FN2) The defendant argues that the evidence was relevant to refuting Jane's claim that she had not disclosed the defendant's abuse earlier because she felt ashamed to do so. The defendant "fails to support his ... argument[

] [that it was error to exclude the hearsay statement] with any case or statutory law." *Commonwealth v. Hrycenko*, 417 Mass. 309, 319, 630 N.E.2d 258 (1994). See Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). In any case, "[w]hether evidence is legally relevant is a question which is generally left to the discretion of the trial judge." *Commonwealth v. Chasson*, 383 Mass. 183, 187, 423 N.E.2d 306 (1981). It is within the judge's discretion to exclude evidence that is too remote in time or too speculative, *Commonwealth v. Freeman*, 430 Mass. 111, 116, 712 N.E.2d 1135 (1999), and, here, the trial judge did not abuse his discretion.

[4] [52 Mass.App.Ct. 324] *Restriction on cross-examination.* The defendant next claims it was error to exclude questions on cross-examination of Jane about an allegation she made to a teacher that her mother had been neglecting her and that she wanted to be removed from the house. Jane allegedly made this accusation when she was eight years old, i.e., "at the time that [the abuse] allegedly was beginning." According to defense counsel, "when no one believed her, she was returned to the home. And she admitted that she lied, and she was returned to the home." The defendant argues that the evidence went to the heart of Jane's motive to lie, i.e., her previous fabrication not having been enough to get her out of the defendant's house, she now had to come up with a stronger scenario, one not directed at her mother, to do the job. The defendant claims that the exclusion impermissibly curtailed his cross-examination of Jane.

We think that there was not a sufficient showing of a nexus between the excluded evidence and the defense's theory of fabrication, and that "this lack of linking evidence, together with what was in the circumstances a significant passage of time, provided sufficient grounds for the judge in his discretion to exclude [the questions] as lacking probative value." *Commonwealth v. Chasson*, 383 Mass. at 187, 423 N.E.2d 306. Cf. *Commonwealth v. Herrick*, 39 Mass.App.Ct. 291, 295, 655 N.E.2d 637 (1995) (absent evidence or basis for inquiry, it was proper to limit cross-examination of rape victim and her friend regarding a statement allegedly made by the victim to her friend that she feared a physical examination to establish her virginity; judge was warranted in concluding that such cross-examination "would only invite the jury 'to indulge in conjecture and supposition'"). There was no error.

Improper closing argument. The defendant claims that various statements made by the prosecutor in closing argument constituted improper vouching for the

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victim's credibility, misstated evidence, suggested facts not in evidence, and attacked the character of a witness. The defendant preserved some of these claims by objecting at trial.

[5] "When a defendant objects to the prosecutor's statements made during a closing argument, the standard for determining *827 whether a conviction must be reversed because of inappropriate statements is whether the improper statements made by the [52 Mass.App.Ct. 325] prosecutor 'constituted prejudicial error.' " *Commonwealth v. Rosario*, 430 Mass. 505, 515, 721 N.E.2d 903 (1999), quoting from *Commonwealth v. Daggett*, 416 Mass. 347, 352 n. 5, 622 N.E.2d 272 (1993).

[6] a. *Vouching for witness's credibility.* The defendant objected at trial to the prosecutor's comment regarding Jane's testimony, that "[s]he didn't have to subject herself to the humiliation of talking to countless strangers about horribly embarrassing personal experiences in her young life."

The statement made by the prosecutor is similar to one discussed in *Commonwealth v. Krepon*, 32 Mass.App.Ct. 945, 590 N.E.2d 1165 (1992), that we concluded did not constitute improper vouching. There, the prosecutor's closing argument included this comment on the victim's testimony: "What reason would [the victim] have to come into this courtroom, stand on that witness stand, and testify before fourteen people about all of this if this were pure fantasy ... ? What is her motive?" *Commonwealth v. Krepon*, 32 Mass.App.Ct. at 946, 590 N.E.2d 1165. Here, because the complainant's credibility was at issue, the prosecutor was entitled to "argue from the evidence why a witness should be believed." *Commonwealth v. Freeman*, 430 Mass. at 119, 712 N.E.2d 1135 (citations omitted). Further the prosecutor put the argument in context by stating, "[n]ow, it is up to you to decide, in a few moments, after the judge gives you some instructions, you are going to have a chance, for the first time, ... to decide this case on the facts and evidence that you heard." Cf. *Commonwealth v. Krepon*, 32 Mass.App.Ct. at 946-947, 590 N.E.2d 1165.

[7] b. *Misstatement of evidence.* During closing argument, counsel for the defendant, pointing to alleged inconsistencies in Jane's testimony, said that Jane had lied when "she said[] her mother raped her. She put her fingers inside of her vagina," and that Jane had not previously told anyone that her mother had put her fingers inside of her, suggesting that Jane was not credible. The prosecutor responded in his closing to

this characterization of the evidence (FN3) by arguing: "Was *828 she suggesting, in some way, that her mother was raping her? Ladies and [52 Mass.App.Ct. 326] gentleman, common sense; what is your memory of that? What she was saying was, 'My mother saw something. It was weird. I don't know why she was doing what she was doing, but she put her hands in my pants.' " The prosecution's appeal to the jury to use "common sense," and his characterization of what Jane's testimony likely meant, was a rhetorical device, and in the context of the entire argument, was not improper. See *Commonwealth v. Snyder*, 10 Mass.App.Ct. 896, 409 N.E.2d 814 (1980).

The prosecutor's earlier summary of Jane's testimony in this regard was also not a misstatement. The prosecutor said that Jane had testified, "I don't know what my mother saw. All I know is, after he left the room, my mother came over and put her hands in my pants," and that she had denied, in cross-examination, saying her mother had put her fingers in her vagina, that she had put them in her pants. The jury could not have been misled into thinking that the prosecutor was giving them a verbatim quote of Jane's statements. This was not an inaccurate summary of the testimony, and it was permissible for the prosecutor to focus on those aspects of Jane's somewhat equivocal statements regarding her mother's actions. Further, the judge instructed the jury to consider only the evidence introduced at trial, and the prosecutor's comments did not impinge on their prerogative to weigh the evidence. See, e.g., *Commonwealth v. Kozec*, 399 Mass. 514, 517, 505 N.E.2d 519 (1987) ("A certain [52 Mass.App.Ct. 327] measure of jury sophistication in sorting out excessive claims on both sides fairly may be assumed"); *Commonwealth v. Azar*, 32 Mass.App.Ct. 290, 308, 588 N.E.2d 1352 (1992) (evidence misquoted, but error harmless because we assume some measure of jury sophistication in ability to sort out hyperbole and speculation).

[8] c. *Facts not in evidence.* The defendant claims that the prosecutor made two arguments that were not based on evidence at trial. The defendant preserved below his claim that the prosecutor impermissibly argued at closing that Jane's mother could have gotten a ride to Boston for her daughter's counseling sessions from one of the "fifteen or so people sitting in the back of the courtroom." (FN4)

We agree that the prosecutor's statement strayed beyond the logical conclusions that are permissible to draw from testimony submitted at trial. *Commonwealth v. Freeman*, 430 Mass. at 118-119, 712 N.E.2d 1135. There was nothing in the evidence

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to suggest that any of the people sitting in the courtroom were among those Jane's mother had asked for a ride. We note, however, that the judge instructed the jury both at the outset of trial and in his charge that a closing argument is not evidence and that the jurors were responsible for assessing the credibility of the evidence. *Commonwealth v. Thomas*, 401 Mass. 109, 117, 514 N.E.2d 1309 (1987). Further, the comment did not go to the heart of the matter, but only to a collateral issue, i.e., that of possible bias of Jane's mother, *Commonwealth v. *829 Kozec*, 399 Mass. at 518, 505 N.E.2d 519, To view preceding link please click here and did not prejudice the defendant.

[9] The defendant also claims prejudice from the prosecutor's statements that Jane's mother was in "denial" and that "she must have seen something. She could have realized what was going on, but she didn't want to believe it." The defendant did not raise this issue below.

[52 Mass.App.Ct. 328] The prosecutor's comment was an appropriate response to the closing argument of defense counsel, in which defense counsel argued that Jane's mother was a credible witness in part based on her tearful denials in response to his questions as to whether she had ever seen the defendant touch her daughter in a sexual way. The prosecutor's argument was grounded in the evidence, and permissibly focused the jury on the issue of her credibility. *Commonwealth v. Freeman*, 430 Mass. at 119, 712 N.E.2d 1135.

[10] d. *Attack on character of witness.* Also for the first time on appeal, the defendant raises the additional claim that the prosecutor's closing argument went too far by calling one of the defense witnesses, "nothing more than a seventeen-year-old punk; ... a stooge who was brought in here; that he wouldn't know the truth about what was going on in that household, if it hit him across the face." The prosecutor's comment was in reference to the testimony of Jose Binet, who, testifying for the defense, said that after hearing about Jane's allegations from his mother, had approached Jane in the school cafeteria, asked her whether the defendant "ha[d] sex with her" and that she had replied, "No." The defendant argues that the prosecutor's statements consisted of an attack on the character of the witness and that there was no evidence supporting the statements that Jose was a "punk" or a "stooge."

[11][12] The prosecutor's closing argument went too far. We have cautioned counsel for the Commonwealth to avoid prejudicial name-calling. *Commonwealth v. Mosley*, 6 Mass.App.Ct. 451, 452-453, 377 N.E.2d 435 (1978) (referring to the

defendant as a "wild animal"). See *Commonwealth v. Clary*, 388 Mass. 583, 592, 447 N.E.2d 1217 (1983). Because the defendant failed to object to these statements at trial, our inquiry is limited "to whether they created a substantial likelihood of a miscarriage of justice." *Commonwealth v. Carmona*, 428 Mass. 268, 273, 700 N.E.2d 823 (1998). "In making this analysis we must view the prosecutor's remarks 'considering the argument as a whole, the judge's instructions to the jury, and the evidence produced at trial.' " *Ibid.* On this basis, we conclude there was no substantial risk of a miscarriage of justice.

Judgments affirmed.

[52 Mass.App.Ct. 329] BROWN, J. (concurring).

Although I still adhere to the views set out in my dissent in *Commonwealth v. Dowdy*, 36 Mass.App.Ct. 495, 501-503, 633 N.E.2d 419 (1994) (Brown, J., dissenting), I concur, albeit reluctantly, only because I am "substantially confident that, if the [unbridled comments] had not been made, the jury verdict would have been the same." *Commonwealth v. Cyr*, 433 Mass. 617, 626, 744 N.E.2d 1082 (2001) (citation omitted).

The instant case pushes the outer limits of what this court found permissible in *Commonwealth v. Krepon*, 32 Mass.App.Ct. 945, 946, 590 N.E.2d 1165 (1992). I repeat my usual refrain: It is long past time for attorneys, both defense and prosecution, to have to be reminded not to stray recklessly outside the bounds of proper argument. In this regard, see *Commonwealth v. Redmond*, 370 Mass. 591, 597, 351 N.E.2d 501 (1976), where *830. twenty-five years ago the court reversed and admonished a "prosecutor [who] repeatedly and deliberately sailed unnecessarily close to the wind."

(FN1.) The name is fictitious.

(FN2.) The medical record is handwritten and some words are not legible. The relevant paragraph is set out as follows: "[illegible] No serious illnesses/accidents 0 allergies 0 meds, [illegible] dentist. Discussed SA--[no' or 'wo' or 'uo']--little boy in school last yr touched her--mom raised a fuss. PE Totally [illegible]."

(FN3.) During direct testimony, Jane stated that, at a point during the period the defendant was coming into her room at night and sexually touching her, her mother walked into the bedroom while the defendant was licking her vagina. The defendant pretended that he "was just checking on [her]," and left the

753 N.E.2d 823, 52 Mass.App.Ct. 321, *Com. v. Rivera*, (Mass.App.Ct. 2001)

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room, while her mother "pretend[ed] that she didn't see." Jane testified that her mother then came over and "laid down in the bed with me, and she put her hand inside my pants. I don't know what she was doing. She, like, put her fingers in my vagina. She just, like, touched it. I don't know what she did. Then, she just left." When asked on cross-examination whether her mother had put her fingers in Jane's vagina, she said "Not inside of me. I didn't mean inside of me. I mean, she touched me." The prosecutor then asked, "Okay. But, you said, yesterday, that she put her fingers in your vagina?" Jane answered, "Yes."

We adhere to the notion that counsel for *both* parties may not engage in prejudicial characterizations of evidence, or argue conclusions not logically drawn from the evidence at trial. See *Smith*, Criminal Practice and Procedure §§ 1860-1868 (2d ed.1983), and cases cited. See also *Commonwealth v. Dowdy*, 36 Mass.App.Ct. 495, 502, 633 N.E.2d 419 (1994) (Brown, J., dissenting) ("a plethora of opinions have

rained down upon both defense counsel and prosecutor, warning, threatening, and admonishing" about propriety of closing arguments). Defense counsel's characterization of Jane's testimony as a claim that her mother had raped her was unwarranted, and had it come from the prosecution would rightly have given rise to a claim of prejudice.

(FN4.) When asked by the prosecutor whether she recalled having failed to show up on several occasions for counseling sessions with Jane, after Jane had made the allegation of sexual abuse and had gone to live with her father, Jane's mother responded that she did not have a car and, having just learned to drive, could not drive around Boston. The prosecutor then asked, "And with all the family and with all the friends you have up here, you couldn't find anybody to give you a ride down to Boston, so you could sit in with your daughter on a counseling meeting. Is that what you're telling us?" She replied, "I didn't find nobody. Everybody works, sir."

762 N.E.2d 323, 435 Mass. 1108, Com. v. Rivera, (Mass. 2002)

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***323** 762 N.E.2d 323

435 Mass. 1108

(The Court's decision is referenced in a "Supreme Judicial Court of Massachusetts Further Appellate Review" table in the North Eastern Reporter.)

Supreme Judicial Court of Massachusetts.

Commonwealth

v.

Angel Rivera

January 03, 2002

Appeal From: 52 Mass.App.Ct. 321, 753 N.E.2d 823.

DENIED.

810 N.E.2d 1288, 61 Mass.App.Ct. 1113, *Com. v. Rivera*, (Mass.App.Ct. 2004)

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*1288 810 N.E.2d 1288

61 Mass.App.Ct. 1113

NOTICE: THIS IS AN UNPUBLISHED OPINION.

Appeals Court of Massachusetts.

COMMONWEALTH,

v.

Angel RIVERA.

No. 03-P-1242.

June 24, 2004.

**MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28**

Serving sentences for multiple sex offenses, affirmed on appeal, *Commonwealth v. Rivera*, 52 Mass.App.Ct. 321 (2001), the defendant petitioned, more than six years after he was convicted, for release from unlawful restraint pursuant to Mass.R.Crim.P. 30(a). The trial judge denied the motion, and wrote a margin endorsement, reproduced in the Commonwealth's brief at page four.

In his rule 30(a) motion, the defendant claimed that (a) the prosecutor suborned perjury by the victim; (b) the defendant's trial attorney rendered constitutionally defective representation because she refused to permit him to testify; and (c) the judge "bound and gagged" him by permitting the admission of fresh complaint testimony, while precluding him from impeaching the victim. No affidavit of defendant's trial counsel was submitted with the motion.

The judge discredited the defendant's claims: "[t]here is no issue of credible value raised in the motion ... that has not been argued and disposed of in prior trial and appellate decisions." The judge was partially accurate. See note 8 in the Commonwealth's brief at page eight. Notwithstanding, the defendant's request for relief was properly denied. The claims pertaining to prosecutorial misconduct, judicial bias, and fresh complaint evidence could have, and should have, been raised on direct appeal, and, like the other claims, the substandard counsel claim lacks credible evidentiary support. We rely on the arguments and authorities on pages nine through fifteen of the Commonwealth's brief. The order denying relief is affirmed.

So ordered.

815 N.E.2d 1085, 442 Mass. 1108, Com. v. Rivera, (Mass. 2004)

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***1085** 815 N.E.2d 1085

442 Mass. 1108

(The Court's decision is referenced in a "Supreme
Judicial Court of Massachusetts Further Appellate
Review" table in the North Eastern Reporter.)

Supreme Judicial Court of Massachusetts.

Commonwealth

v.

Angel Rivera

September 10, 2004

Appeal From: 61 Mass.App.Ct. 1113, 810 N.E.2d
1288.

DENIED.

E N D O R S E M E N T

ANGEL RIVERA v. PAUL VERDINI
 02-CV-11185-MEL

LASKER, D.J.

Respondent, Verdini, moves to dismiss this petition seeking a writ of habeas corpus for failure to exhaust state remedies. Verdini argues that because Rivera has not yet provided the state's highest court with the first opportunity to pass on the merits of these federal constitutional claims, the petition should be dismissed. 28 U.S.C. §2254(b)-(c).

"Exhaustion obligations mandate that a habeas petitioner present or do his best to present, his federal claim to the state's highest tribunal." Adelson v. DiPaola, 131 F.2d 259, 263 (1st Cir. 1997) citing United States ex rel. Kennedy v. Tyler, 269 U.S. 13, 17, 46 S.Ct. 1, 2-3, 70 L.Ed. 138 (1925); Mele v. Fitchburg Dist. Court, 850 F.2d 817, 820 (1st Cir.1988). This circuit has held that the decisive pleading is the application for further appellate review, and the Court must determine whether the petitioner fairly presented the federal claim to the SJC within the four corners of that application. Id.

After carefully reviewing Rivera's application for leave for further appellate review ("ALOFAR"), I regret to conclude that it does not meet that test. The ALOFAR fails to alert the Court to the embedded constitutional claims in his case. It does not indicate a violation of his rights under the federal or state constitution, nor does it mention case law that identifies a violation of a federal constitutional right. His analysis in the ALOFAR based entirely on state law and he failed to cite to a single federal case or authority, nor did he cite the U.S. Constitution, with the exception of one reference to the 6th amendment.

Rivera's ALOFAR is not sufficient to meet the test as set out by this Court. His argument to the SJC, while containing facts, overall is lean, and fails to "make it probable that a reasonable jurist would have been alerted to the existence of a federal question." See Scarpa v. DuBois, 38 F.3d 1, 6 (1st Cir. 1994). Rivera's only reference to a federal constitutional challenge in his ALOFAR is an isolated mention of the Sixth Amendment appearing on page 11 of his ALOFAR. He argues that, "the defendant's right to cross-examination is a fundamental right guaranteed by the Sixth Amendment to the Constitution of

the United States and Article 12 of the Declaration of Rights of the Massachusetts Constitution." This single reference to a federal constitutional right is not sufficient.

Accordingly, Verdini's motion to dismiss on the grounds that Rivera's petition fails to meet the exhaustion requirement is granted and the Commonwealth's motion to dismiss is granted.

It is so ordered.

Dated: July 29, 2003
Boston, Massachusetts


United States District Judge

If you view the full docket, you will be charged for 5 Pages \$ 0.40

US Court of Appeals for the First Circuit
Case Summary

Court of Appeals Docket #: 03-2353
Nsuit: 3530 Prisoner: Habeas Corpus
Rivera v. Verdini, et al
Appeal from: U.S. District Court of MA

Filed: 10/2/03

Lower court information:

District: 0101-1 : 02-11185

lead: 02-11185

Ordering Judge: Morris E. Lasker

10/23/03 MOTION filed by Attorney Martin R. Rosenthal to be appointed as counsel on appeal for Appellant Angel L. Rivera. Certificate of service dated 10/23/03. [03-2353] (dona)

10/28/03 ORDER filed by Judge Kermit V. Lipiez. Petitioner's motion for appointment of counsel is denied. (ciny)

11/12/03 ORDER filed Certificate of Appealability denied in district court. Denial Date: 10/24/03, CAP Memo due 11/26/03. [03-2353] (dona)

1/22/04 SUPPLEMENTAL RECORD consisting of 1-26, 31-33 filed. [829421-1] [03-2353] (dona)

10/28/04 JUDGMENT entered by Judge Sandra L. Lynch, Judge Kermit V. Lipiez, Judge Jeffrey R. Howard. We hereby deny the petitioner's request for a certificate of appealability. To proceed on appeal, the petitioner needed to show both that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). He did not make the required showing. Minimally, he failed to make any showing that his Sixth Amendment rights were abridged. Even assuming, dubitante, there were any evidentiary errors, not all evidentiary errors rise to the level of federal constitutional violations, and there were no constitutional violations here. Niziolek v. Ashe, 694 F.2d 282 (1st Cir. 1982). Appeal terminated. (ciny)

11/18/04 MANDATE ISSUED. [03-2353] (ciny)

11/18/04 RECORD consisting of pleadings #1-28, 31-33 returned to originating court. (ciny)

SA0049

EVENTS RELATING TO STATUTE OF LIMITATIONS AND TOLLING

Date	Event	Countable Days	Total Days
June 6, 1997	Petitioner convicted	0	0
August 20, 2001	Appeals Court affirms convictions	0	0
January 3, 2002	S.J.C. denies application for further appellate review	0	0
April 3, 2002	Expiration of time to seek certiorari	0	0
February 24, 2003	Petitioner files new trial motion in state Superior Court	327	327
March 27, 2003	Superior Court denies new trial motion	0	327
June 24, 2004	Appeals Court affirms denial of new trial motion	0	327
September 10, 2004	S.J.C. denies application for further appellate review	0	327
October 18, 2004	AEDPA'S one-year limitations period expires	38	365